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Regulation by Intimidation Has Hanged Itself

Futility of Attempts to Bully Courts and Commissions

ONE of the striking developments in the history of the regulation of public utilities has been a widespread effort to force rate reductions—without regard to the law or the facts—by political threats not only against the utilities and the state public service commissions, but even against the courts. The author gives typical examples of these bullying tactics and points out why they must fail in the long run.

BY RAYMOND S. TOMPKINS

THE strangling noises you hear sometimes nowadays may really be somebody actually being strangled. More likely, however, it will be a humble utility man cautiously stifling a belly-laugh. He conceals this evidence of innocent mirth because in some quarters it is still considered unseemly for a public utility person to be happy. But the cause of the utility man's merriment is merely the sudden rediscovery of the Constitution by a large proportion of the population of the country.

This discovery has created a good deal of excitement, for many a man who hasn't heard of the Constitution for years, except as the refuge of the rich, has suddenly realized that it is the real foundation of the American form of government, and that violation of its principles can actually hurt not only great industrialists but some very ordinary people as well. Hence

the country seethes and boils with liberty leagues, national unions, and associations for the defense of the Constitution; and oratory about the faith of the founding fathers, interlarded with eloquent invocations of the spirits of Washington, Jefferson, Adams, Jackson, and Madison, which would have been snickered at ten years ago, are today applauded and printed in all the papers. To be sure, the snickering has by no means ceased. But by and large the applause for the Constitution drowns out the snickering.

Now, the reason the utility man is quietly amused at all this Constitution worship is that he remembers it wasn't so long ago when his own devotion to this sacred cause was being booed at. No one needs a scholar's acquaintance with utility problems to be familiar with the tendency of public utilities occasionally to seek the protection of the Constitution. Nor are many unfamiliar with the distressed noises made by the friends of public ownership when this protection was sought.

An appeal by a utility from a state commission to a court always wrung shrieks from antiutility people that regulation had broken down. The theory seemed widely held that by the simple act of invoking the functions of the judiciary the utilities were somehow actually undermining the orderly processes of the government instead of strengthening them.

Occasionally today the suggestion is heard that the utilities be kept out of the courts. This suggestion is not brand new. It was being heard even in the balmy days of 1929. Indeed, it was that year that the governor of New York, in promulgating his plan for power development on the St. Lawrence river, expressly took the whole project out of the hands of the New York Public Service Commission and spoke of "the belief held by many" that the regulating powers of commissions have been "impaired" through Federal court decisions which, he said, "have to a large extent nullified the protection originally intended for the consumer."

This expressed to a nicety the bold idea that utility regulation was no good if it stayed within the law. It also put patly the idea that one class of citizens, the consumers, could not really be protected by the laws unless another class of citizens, the public utility people, were denied the protection of the laws. It was one of the earliest utterances of the theory that perhaps there ought to exist some sort of super-power in the government which could transcend the democratic concept of equal justice for all, and benignly sandbag some of its citizens into agreeing to stay "socked" and say nothing.

All this soon formed the foundations of an idea which attracted many devotees. When this governor of New York became President of the United States four years later he found a large and enthusiastic cult ready and waiting to apply it on a large scale. They were the earliest New Dealers, and the Constitution of the United States was their idea of Public Enemy No. 1, because it kept bobbing up and preventing their realization of the More Abundant Life by keeping their assaults upon the utilities within the bounds of legality.

Perceiving the hopelessness of this kind of a campaign they turned to what looked like the only chance remaining. They began to try frightening everybody concerned—frightening the utilities with threats of boycotts and consumers' strikes; frightening the commissions with threats of political massacre; frightening even the courts with threats of curtailment of power. This was a real beginning of an era which may come to be known in the business history of the country as the era of "Regulation by Intimidation."

Intimidation as a guide to utility regulation took many forms. The most primitive was the outburst of popular indignation if a commission raised a utility's rates. This form of intimidation appeared frequently during the World War and the post-war period, from 1916 to 1921, when rates had to be jacked up to prevent wholesale receiverships and deterioration of public service. Later on applications for rate raises became quite infrequent, and were based upon no such requirements of public service as they had been during the war and post-war years. Hence many were refused by the commissions.

THIS, however, did not stop the process of intimidation, but merely turned it toward new victims. That the utilities' constitutional rights under the Fourteenth Amendment were being denied and could only be redressed in the courts, made no difference. The utilities were cry-babies; grabbing at the Constitution and the Fourteenth Amendment as a cry-baby grabs at its mother's apron-strings. The action of the utilities was made to appear a mean, despicable thing. As for the commissions, the chief thing said to have been demonstrated about them was their utter futility. What good were they when the utilities refused to take their "no" for an answer? They and the whole system they represented, had "broken down."

Highly illogical, but entirely natural, was the next step in the process of intimidation, namely, threats against the commissions.

The most commonplace variety of threat against a commission was the threat of public investigation. No threat maker could have explained why he would have investigated a commission because a utility appealed from its decision to a court, but nobody asked him to explain, and so he didn't have to try. One of the earliest threats of this sort was heard in California in 1929, when the state legislature appointed an investigating committee, hostile, of course, to the commission. However, this pioneer experiment in regulation by intimidation offered little encouragement to others,

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for the investigators were compelled by the weight and force of the facts to commend the commission's work in the highest terms.

BUT no intimidator is himself intimidated by an early failure, and once the weapon of public investigation became handy it was frequently seized. More investigations of public service commissions sprang up in Pennsylvania, in Illinois, in Michigan, in Utah. The Maryland commission was threatened with a probe by a disgruntled improvement association. California echoed again with antiutility outcries, this time for another probe of the state's railroad commission. In New York this fever went to curious lengths, taking the form of a denunciation of Chairman Milo R. Maltbie for favoritism to utilities! This seemed to many observers like accusing a cat which had been a famous mouser of selling out to the mice.

Possibly because others were equally outlandish these early attempts at intimidation by investigation made little headway. Most public service commissioners seemed to be unconscious of any dishonesty, and refused to be scared. In Michigan the commission displayed astonishing courage. When Governor Comstock asked five members to resign "on grounds of political expediency and public demand," they simply wouldn't do it. In South Datoka a bipartisan investigating committee reported that charges by the governor against the commission had no foundation. But by this time the inquisition fever had taken hold and reverses only spurred on the intimidators. From 1929 to 1935, investigations of public service commissions had been authorized or actually undertaken in twenty states, and other probes on a Federal scale had been ordered by Congress.

SINCE investigations and inquisitions wound up in victories for the commissions as often as not, the intimidators sought shorter cuts. In Nebraska, home of the Great Commoner, who unsuccessfully had defended the "present value" principle of valuation in the celebrated case of Smyth *v.* Ames, the legislature scorned investigations and entertained a bill to abolish the state railway commission outright. Action upon this bill was indefinitely postponed only by the narrowest of margins. And it was down in Georgia where two rabble-rousing city attorneys sought the swiftest possible guillotining of the American theory of regulation by demanding "regulation of utilities by the ballot box!"

This is a curious commentary on the public state of mind about utilities. To "regulate a utility by the ballot box" means only one thing. It means that on election day all the voters will vote "Yes" on the question of a reduction in rates. Yet citizens who are not shocked nor surprised at such a suggestion as this would be outraged at the idea that house rent, grocery bills, and the price of a shave and a haircut be "regulated by the ballot."

So candidates with no platform except the pledge to devote themselves to making utility public service unprofitable sprang up a few years ago like plantain leaves on a neglected lawn. For example, Guy O. Stone sprang up in Georgia not long after

Futile Threats against Supreme Court

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the clarion call to the ballot box by the two city attorneys. Mr. Stone's platform was simplicity itself. He promised the voters that if elected he would work night and day to see that the gas, electric, and telephone rates were reduced. He did not promise to see if they *could* be reduced. That would have been too complicated. He promised to reduce them. Soon a candidate for governor in Connecticut was doing the same thing.

INDEED, a look at the record on this trend toward intimidation indicates that a great deal of the baying, bellowing, and bullying came from governors. The heat generated by gubernatorial campaigns for election, plus a certain feeling of futility in the face of utility laws and control machinery once he is elected, has seemed to produce in a governor a berserk rage against the light and power industry. Hence the first official act of many of them is to go out and rattle sticks along the bars where the utilities are caged, and to make snoots at their keepers, the regulatory commissions.

Frequently such bullying has had no effect upon rates at all, or even upon regulation, but occasionally it has produced the resignation of a commissioner or a chairman. When this happens it seems to be all the executive wants. He is as full of glee as though he had gotten rates cut in half, and not infrequently is adept at convincing the public that he has accomplished all he promised.

But sometimes a commission chairman, in resigning under this kind of persecution, struck a courageous blow for independence and sanity in utility regulation. Chairman Prendergast did this when he resigned from the New York Public Service Commission in February, 1930, because of a difference of opinion between himself and Governor Roosevelt.

"I do not feel," said Mr. Prendergast, "that the public service commission, which has *quasi* judicial functions, should be influenced in the exercise of those functions by the executive or any other agency."

THESE were noble words, and they and similar utterances by other courageous commissioners have not been without response. Indeed, it is a noteworthy fact throughout all this history of intimidation, that the public

response to the struttings of the country's Great Intimidators has been curiously lukewarm. There have been occasional risings to the bait, but so few in comparison to the lavishness of the bait as to be quite noticeable. Consumers' strikes have been threatened; little groups have sworn they would go to bed by candlelight for the rest of their lives. But on the whole the drum-beaters have not worked up any big parades.

Indeed, some of them have produced exactly opposite effects. Bills to abolish public service commissions were defeated in such liberal states as Nebraska and Tennessee. Even governors have failed sometimes to cringe before the old hypnotic eye of the utility-baiter. Governor Lehman refused to remove Chairman Milo R. Maltbie from the New York commission; Governor White refused to fire Chairman E. J. Hopple of the Ohio commission.

Commissions themselves have stood steadfast while professional intimidators danced around them yelling like Indians in a chromo of "Custer's Last Fight." Some of the threats, too, were calculated to be of the most alarming nature. In Nebraska, some months ago the public service commission had to determine whether or not to insist upon the continued operation of a Union Pacific Railroad train between Valparaiso and Council Bluffs, and when one of the "tribunes of the people" began to suspect that perhaps the commission was going to be unduly influenced by the facts, he sat down and wrote it the following warning:

> We that are on the political firing line have our ears close enough to the ground so we notice the rumblings that the commission favors the corporations at the expense of the people. And as this is an election year I fear that (should your decision be for the railroad), such talk would influence the voter to the detriment of the Republican candidates at the coming primary and fall elections. This precinct that I have represented for the last twenty years is normally strongly Republican and I should hate to see it go the other way.

THE commission's comment on this noble piece of advice was probably very bad politics, but there was no misunderstanding it. It said:

> The commission is governed by the law and the facts. In this particular case neither appears to justify the continued operation of this train between Valparaiso and Council Bluffs.

In a similar railroad case in Montana the commission was astonished to find in the brief of learned counsel for the protestants, a list of the voters in precincts served by the railroad branch in question. The commission thanked the helpful jurisconsult for the hint and decided the case against him.

Since the "terror" (as you might call it) had spread through and around politicians, chief executives, and commissions, it was logical and inevitable that it should finally touch the courts of the country. If there could be regulation by intimidation, why not justice by intimidation? After all, judges were simply human beings who happened to be sitting high up on benches with black gowns to wear and dusty old lawbooks to look into. What right had they to crack the whip over anybody? Thus it came about that the courts, the last resort of those who feel deprived of justice, also became the last resort of those who wanted justice to keep its nose out of utility matters.

The courts were the last resort of

the intimidators. And this, it now seems correct to say, was intimidation's last stand.

Justice by intimidation has failed just as regulation by intimidation has failed. Not that this last stand of intimidation is by any means ended. The rattle-shaking, the booing, and the drum-beating may continue for some time. How long it will go on no man can tell.

WHO, for example, can predict the future course of the swashbuckling Governor Talmadge of Georgia who defies Federal courts like a moonshiner defying the revenooers? He has not only tossed Federal court injunctions out of the gubernatorial window, but has openly exhorted the voters to vote judges out of office if they decide cases in favor of utilities. "Beat the sand out of the judges!" he shouted in a speech at Rome not long ago. The inexorable and implacable Senator Norris (Republican, Nebraska), likewise shook a threatening fist at the judiciary when he called for information recently on Federal and state court "interference" with the installation of publicly owned power plants.

But the latest chapter in the intimidation era now being written with threats toward the Supreme Court of the United States, looks like the last. The proposal has been boldly made that an organized drive be started to curb the court's power, pin its ears back, tie its hands, and limit its judgments to cases hand-picked by the intimidators.

This is the masterpiece, the all-time high in intimidation—and it seems to have accomplished the turning of the worm. For there has ensued not the roar of applause which Senator Norris and his fellow face-makers seem to have expected, but a hullaballoo of indignation and a public clamor in support of the court, with a springing up of leagues, unions, and associations in defense of the Constitution. And at this (as we said at the beginning), the battle-scarred utility man can scarcely suppress a wry grin.

SO will end another period of happy days for intimidators. It will be followed of course, after a time, by another similar period. As long as there are utilities and commissions to regulate them and courts to adjudicate unsettled differences, there will always be professional fist-shakers insisting that the standards of fairness and justice of mankind generally be abandoned in favor of their own personal standards.

Many utility men are alarmed from time to time because such bullying seems to thrive and the bullies seem to prosper. But if they will scan the history of the whole business they will be reassured. The public cheers for the bullies are more dangerous to the

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latter than to the victims of the bullies, for they give the bullies a false hope. In the end it is the bullies who get the sack, not the courts and commissions. For it is one of the oldest and natural practices of American democracy to both denounce the constituted authorities and to obey them; to attack regulation and to desire it; to upbraid the courts, and to destroy those who will not uphold them. This is paradoxical, but so, in many respects, is American democracy.

However, neither is any more paradoxical than the phrase "regulation by intimidation" itself; for the reasons why it has broken down are (1), that it does not intimidate and (2), that it does not regulate. It has not been necessary to combat the tendency by pointing out these two weaknesses. In the natural course of events they have become apparent to every thoughtful citizen. Intimidation, having been given enough rope, has hanged itself.

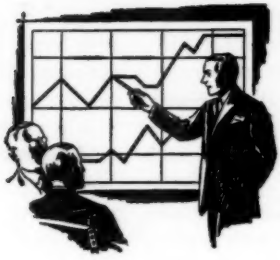
Foreign Phone Facts

POLAND—The Polish government is reported to be investigating the possibility of obtaining special reduced telephone and cable rates, enabling Polish re-emigrants from the United States and Canada to make inquiries concerning their rights of citizenship upon returning to Poland.

HUNGARY—The Budapest government telephone system is making provision for use of a telephone which may be carried in one's pocket. Wall plugs, connecting with the telephone system, would be installed in house entrances, restaurants, street corners and other public places. The pocket subscriber would just plug in and identify himself to the control office. Needless to say, the device will be given only to patrons with good credit rating.

ENGLAND—The custom adopted by some London shops of refusing to make change without a purchase has now invaded the General Postoffice which, incidentally, controls the national telephone system. When one approaches the stamp counter and asks for change for sixpence with which to make some phone calls, the clerk will likely explain that he has no spare pennies but would you like to buy a penny stamp? Public relations a la Brittania!

FRANCE—The French government recently announced that the Paris telephone service would install a new department "S.V.P." (Sil Vous Plait) for answering odd questions such as: "What do Ethiopians eat for breakfast?" or "What color goes well with mauve?" This news gave Bruno Lessing, American columnist, quite a laugh because he insists that French telephone service without any such frills is the worst in the world. His favorite story is about putting in a call for a friend's hotel five blocks away, waiting twenty minutes, and finally, in desperation, visiting his friend on foot. He arrived just in time to get his own call.



RELATIVE COST OF ELECTRICITY NOT SHOWN BY

Comparison of Rate Schedules

Interesting conclusions from an analysis and comparison of domestic electric rates in Cincinnati with those of the Cleveland municipal plant which are applicable to a much wider field.

By EDGAR DOW GILMAN
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MUCH has been written in the last two years about comparative domestic electric rates. In connection with the rate settlement in Cincinnati in 1934 I prepared a list of the then existing rates in the ninety-five cities in the United States of over 100,000 population. The actual cost of electricity was computed for each city for five different quantities of current ranging from 20 to 200 kilowatt hours for each of 4-, 6-, 8-, and 10-room houses.

The cities were arranged in each of these twenty tables in the order of cost from the lowest to the highest. This report was released on November 15, 1934.[1] A chart was also prepared for a 6-room house showing graphically the variations in costs for 60 kilowatt hours.[2] In February, 1935, the Federal Power Commission released a more comprehensive study of domestic electric rates which followed very closely the form and method of analysis of my 1934 studies.

Neither of these reports is entirely satisfactory. They do permit of conclusions as to relative costs of electricity in cities at opposite ends of the tables. But for cities that are close together the method offers no conclusion whatever. It can readily be stated from such tables that both the Cleveland (municipal) rate and the Cincinnati rate are lower than the rates in such cities as Miami, Trenton, New Orleans, and New York. But Cincinnati, Cleveland, Buffalo, Washington, and St. Louis are all close together near the top of the tables. Among these cities some are higher on some of the tables and lower on others than Cincinnati. No definite conclusion can be reached from these studies

[1] See PUBLIC UTILITIES FORTNIGHTLY, Vol. XV, No. 3, January 31, 1935, p. 151.
[2] See PUBLIC UTILITIES FORTNIGHTLY, Vol. XV, No. 7, March 28, 1935, p. 369.

as to the relative magnitude of rates in Cincinnati and Cleveland, for instance. Certain groups of customers receive higher bills and other groups receive lower bills in one city than they would in the other. When I am asked if our rate is higher or lower than the Cleveland rate and start to explain that—that depends—I am met with a very bored expression. What is wanted is a positive answer. Either it is or it is not.

It has occurred to me that this question as to relative magnitude of rates might be looked at from the viewpoint of comparisons of gross revenue which the rates would produce for the utility company from the consumers. We have in Cincinnati a very thorough classification of monthly bills of residence customers for the year 1932. This classification includes 1,224,037 monthly bills. It shows the total number of bills from residents of 1-, 2-, 3-, . . . up to 39-room houses. All the bills for each sized house are grouped in blocks of quantity of consumption, that is, the data show how many bills are from 0 to 5 kilowatt hours, how many from 5 to 10 kilowatt hours, and so on up to the maximum bill from each sized house. By applying the Cincinnati rate to this customer classification, the total gross revenue which would be produced for the company can be derived. By assuming the Cleveland (municipal) rate to be in effect in Cincinnati and applying it to the same customer classification the total revenue which it would produce can be found. In both cases the revenue would be determined from the same number of customers, from the sale of the same total of electricity, and from actual existing data as to the proportion of customers in different blocks of use.

I have made these time-consuming calculations for the 1937–38 Cincinnati rate, the last one of the 4-year agreement, and for the (Cleveland municipal) rate, with the following result:

1937 Cincinnati rate produces	$2,127,724
Cleveland (municipal) rate produces	2,204,985

The Cleveland rate would produce $77,261, or 3.63 per cent, more revenue for the company, taking that greater sum from the people, than the Cincinnati rate would produce. Is it not fair then to say that the Cincinnati rate is a lower rate?

Of course it is true that the classification as of 1932 is not exactly correct today. Because of the much lower rates that went into effect in 1934 there has undoubtedly been a shift in the percentages of bills in various blocks of consumption. But every line of reasoning, including that of changed economic conditions between 1932 and 1936, leads to the conclusion that this shift in percentage is from the lower consumptions to higher consumptions. As between the Cincinnati and the Cleveland rate such a shift would increase the difference between the revenues to be derived. An inspection of Table III in shortened form will show this.

Since all published tables, including my own, have heretofore tended to indicate that the Cleveland (municipal) rate was the lowest in the country it may be well to look at a few facts. First it is desirable to set forth the rates themselves:

TABLE I

1937–38 Cincinnati Rate

First 5 kw. hr. per room	@	0.04
Next 5 " " " "	@	0.03
Over 10 " " " "	@	0.015

Minimum bill—10¢ per room but not less than 60¢.

For purposes of calculating bills, no house is considered as having less than 4 rooms.

TABLE II

Cleveland Municipal Rate

Service charge per bill		0.15
First 600 kw. hr.	@	0.029
Next 1,800 " "	@	0.025
Next 800 " "	@	0.020
Over 3,200 " "	@	0.015

Minimum bill—60¢.

THE above tables show that in Cleveland a customer, after having the 15-cent service charge entered on his bill, is charged at the rate of 2.9 cents for every kilowatt hour up to 600 kilowatt hours. But 99.98 per cent of all the actual monthly residence bills in Cincinnati are under 600 kilowatt hours. For electricity over 600 kilowatt hours and up to 2,400 kilowatt hours the Cleveland customer pays at the rate of 2.5 cents. Since the largest quantity of electricity shown on any monthly residence bill in Cincinnati is 1,180 kilowatt hours all of the electricity that is not paid for at the rate of 2.9 cents would be paid for at the rate of 2.5 cents, and on only 0.02 per cent of the bills would there be any electricity at this second step price. The third step of 2.0 cents and the fourth step of 1.5 cents per kilowatt hour, after using 3,200 kilowatt hours in one month, look well in the tabulation of a rate, but they are imaginary so far as any actual significance to the people of this city is concerned. There just would not be any electricity sold to residents at less than 2.5 cents per kilowatt hours if the Cleveland rate were in effect here in Cincinnati. I wonder if there is any current sold to residents at the last block rate in Cleveland, and if so, what per cent of the total electricity is sold at that price, and on what per cent of the bills does any electricity at that price appear?

CONTRASTED to this situation, what does the Cincinnati rate do? There is no service charge. The rate starts at 4.0 cents per kilowatt hour, drops to 3.0 cents after a consumption equal to five times the number of rooms, and to 1.5 cents after a consumption equal to ten times the number of rooms. In other words, under the Cincinnati rate, customers living in 1-, 2-, 3-, and 4-room houses get all electricity in excess of 40 kilowatt hours at the rate of 1.5 cents. And *52.3 per cent of the 1,224,037 monthly bills are from 4-room houses or less.* In 5-room houses the excess over 50 kilowatt hours, in 6-room houses the excess over 60 kilowatt hours, and so on, is at the rate of 1.5 cents. Compare this to the Cleveland rate that runs constant at 2.9 cents for 600 kilo-

¶ *". . . it seems a fair conclusion to say that the rate already agreed upon for Cincinnati for 1937–38 is not only a lower rate than that of the Cleveland municipal plant, but it is a rate of better form, more adaptable to the increasing uses of electricity, and the comforts which it brings."*

watt hours and does not reach 1.5 cents unless and until (?) 3,200 kilowatt hours have been used!

In Cleveland only that money on the monthly bill in excess of $78.55 is for residential electricity at the rate of 1.5 cents per kilowatt hour. In the 1937 Cincinnati schedule all money in excess of $1.40 for 4-room houses or less, $1.75 for 5-room houses, $2.10 for 6-room houses (all money in excess of 35 cents per room), is for consumption of electricity at 1.5 cents per kilowatt hour.

The kilowatt-hour consumptions at which both rates produce the same bill, at which the Cleveland rate produces the lower bill, at which the Cincinnati rate produces the lower bill, and the per cent of the total annual monthly bills for each is given in Table III shown below.

SPACE in this report does not permit me to give the complete details of the customer classification. However, it is important to have some indication of the distribution of the bills by size of houses and consumption. These data are shown in abbreviated form in the following tables (Table IV and Table V):

TABLE IV

Per Cent of Bills for Different Consumptions

Over 25 kw. hr.	71.84%
" 50 " "	38.38
" 100 " "	11.17
" 200 " "	1.36
" 400 " "	0.11
" 600 " "	0.02

Maximum bill shows consumption of 1,180 kilowatt hours.

TABLE V

Per Cent of Bills in Different Sized Houses

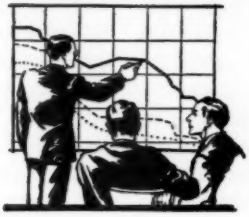
In houses of 4 rooms or less	52.30%
" " " 5 " " more	47.70
" " " 7 " " "	16.52
" " " 9 " " "	5.20
" " " 11 " " "	1.65
" " " 16 " " "	0.18
" " " 21 " " "	0.03

The largest house for which there was any bill was 39 rooms.

The question naturally arises as to whether or not the distribution of bills among the various consumption and among the various sized houses is typical of American cities of corresponding size. If this classification could be accepted then it would be possible to compare the electric rates by the method here set forth for those cities that have block form rate schedules or room rate schedules where the rooms are counted under the same conditions as they are in Cincinnati. It would not be possible to make such comparisons for cities having area or connected load variable schedules.

TABLE III

Size of House	*Consumptions Bet. Which Bills Are the Same by Both Rates*	*% of Bills*	*Consumptions Bet. Which Bills Are Lower by Cleveland Rate*	*% of Bills*	*Consumptions Bet. Which Bills Are Lower by Cincinnati Rate*	*% of Bills*
2	0–15 kw. hr.	40	16–46.4 kw. hr.	50	Over 46.4 kw. hr.	10
3	0–15 " "	17	16–46.4 " "	60	" 46.4 " "	23
4	0–15 " "	12	16–46.4 " "	52	" 46.4 " "	36
5	0–15 " "	6	16–60.7 " "	62	" 60.7 " "	32
6	0–15 " "	5	16–75.0 " "	64	" 75.0 " "	31
8	—	–	0–103.6 " "	69	" 103.6 " "	31
10	—	–	0–132.1 " "	63	" 132.1 " "	37
15	—	–	0–203.6 " "	56	" 203.6 " "	44
% of total bills		12.3%		59.2%		28.5%



Importance of Cheap Rates under 200 Kilowatt-hour Use

"THERE is not going to be much increase in electricity used by people who have been using over 200 kilowatt hours per month, no matter how cheap it is. The field for electricity to bring greater comfort and convenience to people lies in making it cheap under 200 kilowatt hours. . . . What a rate is for electricity over 400 kilowatt hours is really not a practical factor in consideration of its use for city dwellers."

THERE are 19 cities, among the 95 of over 100,000 population, that have a population over 400,000. These are as follows:

Baltimore, Md.	820,500
Boston, Mass.	788,500
Buffalo, N. Y.	587,600
Chicago, Ill.	3,523,400
Cincinnati, Ohio	462,200
Cleveland, Ohio	923,200
Detroit, Mich.	1,720,700
Kansas City, Mo.	416,300
Los Angeles, Cal.	1,385,000
Milwaukee, Wis.	603,500
Minneapolis, Minn.	481,700
Newark, N. J.	448,400
New Orleans, La.	474,500
New York, N. Y.	7,218,100
Philadelphia, Pa.	1,978,900
Pittsburgh, Pa.	680,900
St. Louis, Mo.	832,700
San Francisco, Cal.	662,400
Washington, D. C.	493,000

Of the above cities, according to the latest information which I have, the rates in use in each except Boston, Chicago, Detroit, Kansas City, Milwaukee, Minneapolis, and Pittsburgh are the straight block form. Boston has an area variable rate and would not fit the classification. Pittsburgh has a number of rates applicable to different types of residential service and considerably more detail would be needed to determine what revenue would be produced in Cincinnati on the Pittsburgh rates. It is probable that the Chicago, Detroit, Kansas City, and Minneapolis rates could be used to determine what revenue they would produce from Cincinnati. They have room variable rates and from the schedules which I have on file there is no indication of a different basis of room count. There are some variables in the minimum number of rooms to be considered in figuring bills but the customer classification available is of sufficient range to take care of this variation. The Milwaukee rate has a different method of computing rooms and careful consideration would have to be given as to whether that rate could be used in connection with the Cincinnati classification.

If the per cent of distribution of bills among houses of different sizes and among the different quantities of electricity consumed are the same, a comparison of the gross revenues produced would have the same relative standing even though the rates were those of cities of vastly different size. So far as the local application of this method is concerned the question as to whether or not the per cent of distribution in Cincinnati is typical of that in other cities would not enter in in determining what certain rates would do locally.

The problem points to an interesting study of the characteristics of customers' classifications. Would only 0.02 per cent of the annual monthly bills in other cities exceed 600 kilowatt hours? Would approximately 28 per cent of all the bills in other cities be under 25 kilowatt hours and would the distribution in percentages be approximately as shown in Table IV? If it were possible to get together such data from a number of cities and it was found that the characteristics were approximately the same, it might be possible to set up a standard distribution of percentage of bills and quantity of electricity for the purpose of determining the *relative* gross revenues which rates would produce. Or if the characteristics were very close the classification from any one city could be used as a basis for such comparison. Such a study would mean work—lots of it, but it would be worth while.

Table IV showing that only 0.11 per cent of all bills are over 400 kilowatt hours, only 0.02 per cent over 600 kilowatt hours, and the maximum consumption on any residence bill only 1,180 kilowatt hours substantiates the statement made before the meeting of the American Society of Municipal Engineers last fall that rate structures in many cities are theoretical and meaningless.[3] There are cities that have residence rate schedules that, like Cleveland, do not reach the lowest block until many thousand kilowatt hours have been used. The most extreme case is San Antonio, Texas, where the lowest rate becomes applicable after 20,000 kilowatt hours have been used in one month.

Out of the 1,224,037 residence bills in the city of Cincinnati in the year 1932 only 1,365 were for more than 400 kilowatt hours. One thousand two hundred and thirty of these were from people who live in homes of eight rooms or more. Table V shows that 52 per cent of all the bills come from homes of four rooms or less. There are only 18 bills of the 1,365 bills over 400 kilowatt hours from homes of four rooms or less.

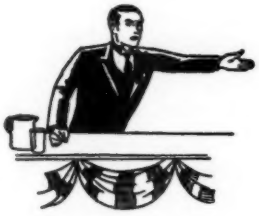
Of what practical value to the masses of common people are rate structures that reach low prices for electricity over even 400 kilowatt hours? The lower rates in Cincinnati are going to increase the use of electricity. The total residential electricity divided by the total number of residence customers is undoubtedly larger today than in 1932 and will probably be still larger in the years to come. But that is chiefly because electricity has been made cheaper by our rates for such quantities as are likely to be used in homes equipped with the usual

[3] See Public Utilities Fortnightly, Vol. XVI, No. 11, November 21, 1935, p. 707.

electrical conveniences. Those homes that were using from 150 to 250 kilowatt hours per month in 1932 already have those conveniences. They are, in general, the homes of people that have not been restrained because of the size of the monthly electric bill. They already have the modern electrical home equipment.

There is not going to be much increase in electricity used by people who have been using over 200 kilowatt hours per month, no matter how cheap it is. The field for electricity to bring greater comfort and convenience to people lies in making it cheap under 200 kilowatt hours, so that the 28 per cent of bills that in 1932 used under 25 kilowatt hours per month, and the 62 per cent that used under 50 kilowatt hours, may be encouraged to purchase electrical home devices that will bring them greater comfort and happiness and will raise their consumption to the higher brackets. It is the increasing of the use of electricity in these homes to a use of from 100 to 200 kilowatt hours per month that will increase the average consumption. What a rate is for electricity over 400 kilowatt hours is really not a practical factor in consideration of its use for city dwellers.

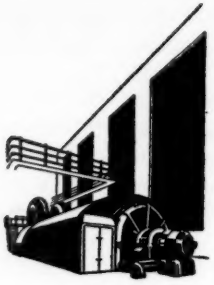
With consideration of the facts here given it seems a fair conclusion to say that the rate already agreed upon for Cincinnati for 1937–38 is not only a lower rate than that of the Cleveland municipal plant, but it is a rate of better form, more adaptable to the increasing uses of electricity, and the comforts which it brings.



Regulatory Commissions Are Not Supreme

"A CONSTANT source of concern to the commission is the widespread popular misconception of misunderstanding of its jurisdiction, functions, and authority. It is surprising to know the number of people, many of them well informed, educated, and prominent in business and professional life, who think that the commission can lower or increase rates at will and arbitrarily fix a value for property on which the owner may be allowed to earn, and by its *ipse dixit* say what the return to an owner shall be and what rates he may charge the public for the service he renders. It is unnecessary to state the contrary to be the fact to this audience, which knows that every man, good or bad, innocent or guilty, powerful or weak, rich or poor, including a utility, is entitled to his day in court and that no tribunal, even of the legislative complexion of a public service commission, can, against the owner's wish and without his consent, take from him his property, even for the public use and common good, without giving him notice and opportunity to be heard."

—HON. JOHN J. PRESTON,
Chairman, West Virginia Public Service Commission.



Kilowatts to Burn

What to do with 300 kilowatt hours a month in the average home something of a problem for the housewife

By WARREN M. PERSONS

THE average home in the United States could readily use 300 kilowatt hours a month, 3,600 kilowatt hours a year, without stretching the point.—As there are roughly 25,000,000 homes in the United States, this would require 90 billion kilowatt hours annually, roughly eight times the present residential consumption.

I WAS reading an article on "Yardsticks and Birch Rods" in *Harpers Monthly Magazine.* The authority? Mr. Leland Olds of the Power Authority of the State of New York.

Mr. Olds' sentences, pregnant with figures, struck home. For I live in one of the 25,000,000 homes. That is, if I really live when, as I suspected, hundreds of kilowatt hours pass me by each year—and if a 4-room apartment in New York city is a home.

"How many kilowatt hours enliven our home life each month?" I asked my wife. I knew she had the answer, for she keeps records of such things.

"The most that we have ever used in one month is 100 kilowatt hours—last January."

"We must do something about it," I replied with conviction.

"Do you mean that we should economize on electricity? Now let me tell you—"

"Just the opposite," I said. "The deficiency in our best month is precisely 200 kilowatt hours. In fact, we could readily use 3,600 kilowatt hours a year or an average of 300 kilowatt hours a month. The only reason we do not use this amount is the high cost of kilowatt hours. Authority says so. For instance, in New York city for domestic consumption over 125 kilowatt hours per month, the excess would cost 2 cents per kilowatt hour. If we could buy additional kilowatt hours for one cent apiece instead of 2 cents, we could cook with electricity instead of gas—"

"Not with a gas stove, we couldn't," she interrupted.

"Of course, we would have to buy an electric range—or induce our landlord to install one. What I am thinking of is, first, to abolish gas, which reeks of the gay nineties, and second, to reduce operating costs."

"Now see here," she began, "I keep the accounts, pay the bills, and use the electric appliances—thank God for them. But you and your Leland Olds talk as though you'd invented kilowatt hours and felt you just had to convert unbelievers. I have been thinking how I could utilize electricity for years. I have visited the electrical appliance shows. I have consulted the utility company's engineers and had them make estimates. You talk about averages. But our problem is specific, and so is the problem of every family. Here are the facts:

"We have electric lighting, radio set, flatirons, vacuum cleaner, sewing machine, toaster, refrigerator, and fans. We would not use them more freely if kilowatt hours cost nothing. Our maximum monthly electric bill at current rates is $4.80 plus 10 cents city sales tax. We have a good gas range and electric refrigerator which go with the apartment. Hot water is supplied.

"As to your first point, I am perfectly content to continue cooking with gas. As to your second point, I have priced electric ranges and had the utility engineers estimate the cost of installation in this twelfth floor apartment. A range would cost at least $100 and heavy service wires would have to be put in from the street, costing over $400. To start with, our investment in electric range and wiring would be at least $500. The interest on that amount alone, at 6 per cent, would be $2.50 a month. Then, there is depreciation and cost of current to be added. Do you know that our monthly gas bill has never exceeded $2.30? The engineer told me that equal service from an electric range, even at the TVA rate of 1½ cents a kilowatt hour, would cost $2.62 a month."

"How about air conditioning?" I ventured.

"I had an estimate made on that, too. It would cost $2,000 to install—and where would we put the—"

"You win," I said, "we won't use our 3,600 kilowatt hours a year until our landlord at least provides the wiring for them to get into the apartment. So far as I am concerned, he will have to supply the places for them to go after they get in. Let Leland Olds convince him. I wonder if there is anything else in this magazine worth reading."

But my wife had the last word: "Thirty six hundred kilowatt hours with no place to go. I won't have a lot of loose kilowatt hours cluttering up my house even though the Tennessee Valley Authority asserts 'the public interest in the widest possible use of power is superior to any private interest!'

"My motto is, a place for every kilowatt hour we buy and every kilowatt hour in its place."

Value-of-the-service Factor in Utility Rate Making

Part III

In the previous articles the author discusses various concepts of value of service and their application in rate cases (see Public Utilities Fortnightly, *March 12th and March 26th issues). In the present and concluding article the author continues his analysis and reaches the conclusion that value of the service is a potent force in pricing utility services, but that vigorous and exacting research and study are required to develop its potentialities and fullest usefulness.*

By GEORGE J. EBERLE

Many commission decisions reflect confused thinking upon the differences and relationships between cost of service, value of service, and ability to pay. A few will be cited to disclose some of the misinterpretations and misapplications which have been made of these fundamental concepts.

In a decision involving a reduction of electric rates the regulatory body made the following statement bearing upon the basis for determining the reasonableness of the existing rates which it said must be judged by the value of the service rendered and not by the profits of the company: [14]

> . . . the only way by which the value of the service can be ascertained in a case of this kind is by examining the company's records, its capital account and income, and all elements that should be considered in establishing a proper rate base upon which the company is to be allowed to base its earnings.

This infers that cost of service is a determinant of value of service. How can cost to the producer, for instance, measure the value of electric service to the individual consumer?

The value of service to the individual is dependent upon the comparative satisfactions derived, while the cost per unit is determined by the operating expenses, fixed charges, and return required to produce the service. If cost measures this value then the price, or rates, would always tend to be equal to cost, assuming that ability and willingness to pay do not interfere. But this is not true.

The prices or rates paid for a particular service, or for whole schedules of service, as shown, are often above

[14] New Brunswick Board of Commissioners of Public Utilities, City of Moncton *v.* Moncton Tramways, Electricity & Gas Co. Ltd. P.U.R.1932B, 368, 373.

or below the actual cost, and if a service is consumed for a considerable time the price paid is always less than the value of the service, otherwise ultimately there would be no purchases. The consumer demands a margin in value received over and above the price paid or cost to him.

THAT value of service is measured by cost to the company was held by the Connecticut commission in 1934 in the Ansonia Water Case cited and is subject to the same criticism as the foregoing quotation. The commission said "clearly the value of the service is the cost to the company, honestly and economically managed, . . ." [15] Under the previous discussion, Part I, reference is made to an article by Clyde Olin Fisher, in which he severely criticizes the Connecticut commission for ignoring value of service as a factor in rate making. Mr. Fisher testified for the consumers in this Ansonia Water Case and in the Portland Water Case. In his article he measures the reduction in purchasing power of the consumer during a period of years by the decrease of such indices as bank debits to individual accounts, bank deposits, and employment, and the increase in unpaid property taxes and relief expenditures which are then compared with the changes in gross revenue of the utility. The indexes of decreased purchasing power disclosed a much greater variation than the reduction in utility revenues during the depression. He concludes, therefore, that the utility has collected such a larger proportion of the consumer's dollar that the charge has exceeded the value of the service. His general and specific statements are as follows:

> If the utility corporation during a period of greatly decreased purchasing power collects from its customers a sum of money which represents a greatly increased portion of their purchasing power, the company is charging in excess of the value of the service.
>
> If there is any validity in the principle that a public utility is charging in excess of the value of the service rendered by it when over a period of years, with no substantial change in the quantity or quality of services given, it attracts to itself an increasing portion of the consumers' purchasing power, it seems conclusive that in 1933 the Portland Water Company was charging for its service a price in excess of the value to consumers.

MR. Fisher infers that value of water service decreased with the reduction in buying power, or ability to pay, in fact decreased to such an extent that the price was in excess of the value of water service. This is erroneous in the light of the foregoing discussion.

The value of water service to most individuals, subjectively considered, was just as high during the depression as during prosperity, probably higher. What really happened was that due to decreased income the margin between the ability to pay and the price, or cost of water to the consumer, had decreased, but evidently not to the breaking point because the revenues of both utilities were well maintained during the depression. If it were true, as Mr. Fisher claims, that the price charged was in excess of the value of the service, then the curtailment of water consumption would have been drastic because consumers will not pay for long in excess of the value of the service.

The commission and Mr. Fisher both appeared to miss the point that not water alone, but all other necessi-

[15] Docket No. 5973, July 10, 1934.

ties such as food, clothing, and shelter had taken an increased portion of the consumers' dollar, and there is no reason for singling out utility charges as being outstandingly oppressive. The Federal administration in fact tried to increase prices to the 1926 level during the depression and thus increase the burden of necessities.

SINCE the Connecticut commission holds that cost of service determines value of service, and since Mr. Fisher in his article criticizing the commission does not differentiate between ability to pay and value of service, we reach the ridiculous situation where the three concepts are considered basically the same.[16]

The margin referred to is generally not understood. In another electric case where the rates to large power users yielded little profit and the rates to small domestic and commercial users were noncompensatory, but still the utility earned in excess of a fair return, the commission stated that the other electric rates must exceed the value of the service. The statement was:

> . . . the electric utility is earning substantially in excess of a fair return, there is no escape from the conclusion that the rates in between those named must be high rates, and the inference is clearly supported that they are in excess of the reasonable value of the service.[17]

The high rates so condemned had probably been in force for a long time, and they were not in excess of the value of the service, but what the commission should have said is that the margin between the price paid and the value of the service of these high rates was much smaller than such margins of the various low rates, and therefore, discrimination existed and rectification was necessary.

IT would appear reasonable to assume that prices paid for utility service over a period cannot be higher than the value of the service, even under certain monopoly conditions. This thought has been expressed by the public service commission of West Virginia when it stated that a rate should never be increased above the maximum limit of the reasonable value of the service rendered.[18]

Where the cost of service, as measured by bare out-of-pocket costs, is above the value of the service, or, stated in another way, where the value of service to patrons may be less than such costs, the particular service, or, if it applies, the whole utility, is in

[16] *Journal of Land & Public Utility Economics*, February, 1935.

[17] Alabama Public Service Commission *v.* Birmingham Electric Co. P.U.R.1932D, 148, 163.

[18] Vol. 4, P.U.R. Dig. 3137.

¶ "IT *would appear reasonable to assume that prices paid for utility service over a period cannot be higher than the value of the service, even under certain monopoly conditions. This thought has been expressed by the public service commission of West Virginia when it stated that a rate should never be increased above the maximum limit of the reasonable value of the service rendered.*"

jeopardy and faces abandonment. A commission confronted with these conditions should insist upon charging minimum cost rates for particular services if it is at all possible, and, in the case of the whole utility, make a thorough investigation to determine whether the utility is suffering from general inefficiency of operation, or is woefully weak in sales effort, or should regrade its service to fit the classes of purchasing power, or improve it so it is worth more. The utility, as has been formerly stated, may be suffering from past overextensions and overcapacity, thus its rates may have to be below any type of cost to meet the value of service standard either for all services or for particular ones.

In a telephone case a commission states that cost of service is the only standard and refuses to consider the value of service concept under any consideration.[19]

Much the same criticism which applies to the above statement applies to the former quotation of the New Brunswick commission. However, the latter statement is more drastic, and hence the position more untenable, because the commission first absolutely discards the value of service basis and then states that cost of service is the only measure for rate making. The opinion of the commission in that case which states that value of service to some consumers is less than the price paid no matter how low the rates were made is in error. As stated previously, possibly such a condition could exist temporarily, but not indefinitely. In fact, the commission contradicts itself in the same decision and upholds the value of the service principle unequivocally when it states:

> Statements that any service is worth nothing may be dismissed without consideration. Men do not apply nor continue to pay for that which is worth nothing to them. It is important, however, that a charge be just, whether great or small.[20]

It was held in a gas case that rates for lighting and heating should be the same regardless of the value of the service because "The cost per unit to the company is no greater for one class of service than for the other." Then the commission quotes the Pennsylvania Supreme Court with approval as follows:

> The regulation in question seeks to differentiate the price according to the use for heating or for light. It is not claimed that there is any difference in the cost of the product of the company, the expense of supplying it at the point of delivery, or its value to the company in the increase of business or other ways. . . . The real argument seeks to justify the difference in price solely by the value of the gas to the consumer as measured by what he would have to pay for a substitute for one purpose or the other if he could not get the gas. This is a wholly inadmissible basis of discrimination.[21]

One does not care to imagine how the use of public utility services would be restricted if the edict of these decisions were made the absolute law of the land in rate making; namely, that if costs are equal rates should be equal regardless of the value of the service. Such rigidity of policy destroys all the fine points of pricing utility services and would reduce the consumption to such an extent that the cost per unit to all consumers would be higher. Developmental or promo-

[19] Oregon Public Service Commission, in *Re* Pacific Teleph. & Teleg. Co. P.U.R.1922C, 248, 258.

[20] *Re* Pacific Teleph. & Teleg. Co. *supra*, at p. 269.

[21] Baily *v.* Fayette Gas-Fuel Co. (1899) 193 Pa. 175, 183; P.U.R.1915E, 763, 790.

Effect of Ability to Pay on Rate Making

"In theory ability to pay attempts to fix rates so as to collect utility revenue with the least effort on the part of the company because of the unwillingness of consumers to part with their money is reduced to a minimum, or stated in another way, the willingness of consumers to pay is at a maximum. This psychological factor is more important than is often realized since it influences the whole undertone of public relations."

tional rates could not be charged because both value of service and ability to pay could not play a part in determining rate schedules.

Holding that comparisons of the values of various services in use by the consumer or the commission are not permissible as a factor in determining rates, the state corporation commission of Virginia in the following quotation strikes at the very heart of the value of service concept. It also confuses the cost of service with the value of the service, stating that the former measures the latter. In its decision involving an application for an increase in rates by the United Fuel Gas Company, the commission said:

> In this connection counsel for applicant argue that natural gas, by reason of its recognized value as a fuel for certain industrial enterprises, and on account of the added comfort and convenience incident to its use as a domestic fuel as compared with other available fuels for that purpose, the gas as such possesses an intrinsic value inherent in its natural characteristics that should be taken into consideration in fixing the rates to be paid therefor. We could apply the same argument in favor of electricity as a more desirable substance for heating and lighting purposes than gas. However, we are clearly of opinion that, in fixing rates for natural gas, we should not be guided or influenced by the fact that it is more desirable as a substance for heating and lighting than other available fuels, but should only be guided and controlled by the reasonable value of the service rendered and commodity supplied. This value should be such as will secure to the producer a fair return for its investment and enterprise, and at the same time be within reasonable limits, such as the consumer can afford to pay.[22]

How can value of gas service in this case be determined without making comparisons with other light and heat agents? Whether the domestic consumer, for example, will use gas as fuel for cooking depends upon his comparative appraisal of all other fuels available, such as wood, coal, peat, petroleum, kerosene, gasoline, electricity, etc. He measures their heating efficiency, the convenience of handling, freedom from odors, cleanliness, and safety. He considers the prices or costs and his ability to pay. Finally decides upon a purchase. The fact that he considers prices does not mean that it is a factor in determining value of service. Of course, when the question of changing fuels confronts a consumer, he considers not only the prices of the various fuels, but the cost of converting or purchasing new appliances, the continuity of the supply, the probable

[22] P.U.R.1918C, 193, 236.

changes in prices, as well as other matters either tangible or intangible.

In the following quotation the inference is that ability to pay and value of service in production can be used interchangeably:

> There is another side to this question, that which concerns the exaction of higher rates from those whose ability to pay is greater. This has occurred, to some extent, on the railroads, but the trend is away from it and toward the cost of service principle. In a 1921 case, the commission admitted that, where the value of the service permits, some high-grade commodities carry more than their share, so that low-grade commodities necessary to existence might be transported, but held that this did not establish the rule that rates should be based on the value of the service to the shipper. It is doubtful whether ability to pay has been accorded as much recognition in the other public utilities as has been given it in the field of rail transportation.[23]

In the creation of place utilities by transport there is a close relation between ability to pay and value of service. Furthermore, the value of service can be quite definitely measured in money where place utilities are used in further production. But this is not true in all cases of creating place utilities. The value in use of such commodities as industrial coal, sand, gravel, rock, lumber, and cement after transport is quite definite, and the ability to pay depends upon this value, but the movement of the office records of an industrial concern from one city to another has aspects of intangible values which cannot be measured accurately and the ability to pay for such service is not so closely related to these values.

Water used as an ingredient in a product offered for sale has a definite value in use and the ability to pay depends upon that use, but water used to clean the factory premises, or water the lawns, is in a different category.

Where gas and electricity are employed as industrial power the ability to pay depends upon the money value in use, however, gas or electricity used for display lighting has intangible values which defy specific measurement. When personnel is moved to create good will, or maintain or improve public relations, there can be no precise gauge of value. Communication service saves time and transportation costs of personnel and the value is therefore tangible, yet many parts of telephone and telegraph service in business are intangible such as the value in emergencies.

From this analysis it is clear that ability to pay and value of utility service in business are almost identical in some cases, while in others they are as different as in individual consumption. Where the two are closely related and definitely measurable the pricing of utility services must be much more exact than where they are incommensurable and intangible. Generally the terms or concepts should not be used synonymously.

In the Wisconsin Telephone Case the Wisconsin Public Service Commission stated that, "The ratio between the charge made for a utility service and the income of the general public available for such payments is another measure of value of service."[24] It may be contended that this ratio is not a definite measure of the value of service in intimate consumption. Three constituents enter into this relationship—the family income, the telephone charge, and the value

[23] *Journal of Land & Public Utility Economics*, August, 1933, pp. 264, 265.

[24] P.U.R.1932D, 173, 264.

of service objectively measured. A change in any one constituent, obviously, will affect the relationship.

Various analyses of the absence of, or probable relationship between, the ratio of the telephone charge to family income and the value of service suffice to establish the weakness of such a measure of value of service in intimate consumption proposed by the Wisconsin commission, and at least signify that further extensive study is required to fashion more appropriate measures. Furthermore, this ratio is likely to be a more unsatisfactory measure of potential value of service to the domestic consumer, although the commission evidently had in mind only actual value in use.

Now, as to the appropriateness of the ratio of telephone charge to business income as a measure of actual value in use in further production, it may be stated in an off-hand way that the relationship is much closer, and therefore, more representative.

The business income may be indicative of ability to pay, and ability to pay is in turn dependent to a considerable extent upon the value in use of utility services. However, the profitableness of a business, or the proportion of gross which is net, may not be shown by the size of the gross alone, and hence, the ratio of utility charge to gross income may inaccurately measure the value of service in use to the enterpriser except as the gross is a measure of the quantity of utility service required. Clearly, additional study and investigation is necessary to test the statements just made, and whether the ratio is applicable as a measure of value of service in business use.

Relative to governmental and nonprofit institutional consumption of utility services the ratio of charge to income as a measure of value of service has against it all the arguments outlined under intimate consumption when utility use is for intangible purposes, and all the arguments suggested under business consumption when the utility use is for production of tangible things.

In another part of the decision the Wisconsin commission, after showing the large loss in telephone stations during the first five months of 1932 as compared with a similar period during the previous three years, made the following statement:

> This indicates, in a concrete way, that the rates were in excess of the value of the service to these subscribers who discontinued their service or were disconnected.[25]

[25] P.U.R.1932D, 173, 265.

¶ "Such *rigidity of policy* [rates fixed strictly on basis of cost of the service] *destroys all the fine points of pricing utility services and would reduce the consumption to such an extent that the cost per unit to all consumers would be higher. Developmental or promotional rates could not be charged because both value of service and ability to pay could not play a part in determining rate schedules.*"

Possibly some of the discontinuances were due to the fact that the rates charged were in excess of the value of the service, but the majority most likely were caused by the declining margin of satisfactions received from the expenditure of the telephone dollar as compared with the satisfactions which could be derived from other goods and services purchased for that same dollar; and stations were disconnected because the telephone dollar ceased to exist. The statement of the commission is too direct and inclusive.

Finally, in closing the section on "Value of Service," the commission uses this sentence:

> We further find that the services are not reasonably worth in excess of the rates fixed by this order.[36]

If the services, objectively measured, are not worth in excess of the rates fixed by the order no one would purchase them by all the tenets of consumption economics, because no one is interested in trading dollars. The buyer wants and is entitled to that often-mentioned margin above cost. What the commission should have said is that the rates ordered permit an adequate, or reasonable, margin of value in use above the cost of the subscriber. (This statement raises the question as to the meaning of subscriber—domestic, business, or governmental?)

THAT the burden of a rate structure should fall upon those best able to bear it, is to apply a principle of taxation to rate making. The relationship between the outlay for utility service and the size of the individual or family income, or the business profit, has definite application. Even the condition of municipal income or budget may be a factor in fixing utility rates for cities.

Measurement of ability to pay is difficult, but there are general standards which can be adopted that will form a groundwork for the approximation and application of this concept. The classification of consumers should be based not only upon the broad differentiation of uses and costs, but also upon the various capacities to pay. Within a particular class of consumers the determination of steps of rates should take into account the income groups.

In theory ability to pay attempts to fix rates so as to collect utility revenue with the least effort on the part of the company because the unwillingness of consumers to part with their money is reduced to a minimum, or stated in another way, the willingness of consumers to pay is at a maximum. This psychological factor is more important than is often realized since it influences the whole undertone of public relations. Just like taxes, utility revenues should be obtained with the least friction, or to use a simile, should be extracted as painlessly as possible.

To accord ability to pay its proper place as a determinant of rates much more factual data is required than is at hand at the present time. Domestic, agricultural, and institutional consumers, as a rule, have a lower capacity to pay than mercantile, manufacturing, and mining establishments. But data on income and profit groups should be at hand to apply further the taxation principle.

[36] P.U.R.1932D, 173, 265.

Our Refinement of Cost of Service

"IT is probably no exaggeration that if the time, energy, and funds which have been needlessly spent upon the overrefinement of the cost of service principle, especially on repeated detailed inventoried appraisals, had been applied toward the perfection of the value of service and ability to pay principles the interests of the consumer, the utility enterpriser, and the public at large would have been advanced."

It is true that rates cannot vary with the financial circumstances of particular persons, or with the changes in their purchasing power from day to day, or month to month. This is palpably impractical. Such logic, however, does not discredit the whole ability to pay concept, because if this were so, the term "spread of rates" would be an empty phrase.

On the basis of ability to pay, numerous water, gas, and electric rates do favor the small domestic consumer; telephone rates do favor the residential, rural, and service line subscriber; freight rates do favor the low-grade commodities; street railway fares do favor the public and private school pupils; gas fuel and electric power rates do favor the industrialist able to employ competitive fuels and power, etc. In a telephone case the rates charged for single party telephone service exceeded the full cost of the service, and the differential between single party and multiparty service was greater than usual, because switchboard capacity was limited.[27] In an electric case where rates were increased because a shortage of water power existed, the commission stated that it placed the burden upon those consumers who use the service for profit and not upon the small domestic consumers.[28]

IT is apparent that the term value of service has been used loosely and misapplied in public utility rate making. There appears to be no differentiation between value of service to the domestic consumer, to the business consumer, or to the governmental consumer; nor between potential and actual, tangible and intangible, direct and indirect value of service. Some

[27] (Wis. 1924) P.U.R.1925A, 806.
[28] (Nev. 1924) P.U.R.1925A, 456.

of the literature pertaining to public utility regulation and economics is replete with confusion of the value of service concept with cost of service and ability to pay. Proper discrimination is mostly lacking.

What courts, commissions, and utility rate makers should recognize is that value of the service and ability to pay should be employed to so enforce just discrimination by substantiating rates below the cost of service, at the cost of service, or above the cost of service for various classes and districts that utility usage attains its widest application ever approaching universal consumption, and that rates are balanced and equitably assessed. In other words, the concepts of value of service and ability to pay should be applied to broaden the base of cost of service from an out-of-pocket minimum to an above-total-cost maximum.

But the constitutional right to earn a fair return and practical economics demand that total cost, particularly of a utility system or corporate entity, be given first importance.

GENERALLY, the tenets of consumption economics are violated in discussions of value of service by ignoring subjective valuation and its attendant, the margin of satisfactions, or consumers' surplus. Value of service is a potent force in pricing utility services, but vigorous and exacting research and study are required to develop its potentialities and fullest usefulness. It is probably no exaggeration that if the time, energy, and funds which have been needlessly spent upon the overrefinement of the cost of service principle, especially on repeated detailed inventoried appraisals, had been applied toward the perfection of the value of service and ability to pay principles the interests of the consumer, the utility enterpriser, and the public at large would have been advanced.

Pioneer Trolley Service to End

THE first electric street car system in the world is definitely headed for elimination as a result of the awarding of a 20-year bus franchise to the Montgomery City Line, Inc., by the city commission of Montgomery, Ala.

Replacing of the street cars with busses will mark the end of a transportation system that aroused wide interest when it was installed fifty years ago. Twenty persons made up the first passenger list of the "strange contraption that pulled itself" by electricity, the first of its kind in the world, according to the *Birmingham News*.

OUT OF THE MAIL BAG

Rail and Highway Competition

ON page 363 of Neil M. Clark's article, "Trucking from Coast to Coast," in the March 12th issue of PUBLIC UTILITIES FORTNIGHTLY, he makes the following comparison:

	Business done	*Investment*
Railroads	$3,000,000,000	$21,000,000,000
Highway carriers	$2,000,000,000	$1,000,000,000

These figures seemed to me to demand explanation; so I wired Mr. Clark in the following terms:

YOUR ARTICLE CURRENT PUBLIC UTILITIES FORTNIGHTLY STATES RAILROADS REQUIRE TWENTY ONE BILLION INVESTMENT FOR THREE BILLION BUSINESS AND HIGHWAY CARRIERS DO TWO BILLION BUSINESS ON ONE BILLION INVESTMENT STOP RAILROAD INVESTMENT PRESUMABLY COMPRISES ENTIRE FIXED CAPITAL INCLUDING LAND TRACK ROADWAY BRIDGES TUNNELS STOP WHAT CONSTITUTES ONE BILLION HIGHWAY CARRIER INVESTMENT

Mr. Clark replied by telegram as follows:

FIGURES IN ARTICLE ARE APPROXIMATE AND TRUCK FIGURES INCLUDE AN ESTIMATE OF ALL FIXED CHARGE INVESTMENTS BUT OF COURSE DO NOT INCLUDE CAPITALIZATION OF TAXES PAID FOR UPKEEP OF PUBLIC HIGHWAY

THIS is precisely what I surmised, and I submit, therefore, that the comparison made in Mr. Clark's otherwise excellent article is heavily charged with invidiousness. To the extent that highway carriers can be put on a basis really comparable with the situation obtaining among the railways there is little foundation for any contentions of economic superiority on the part of trucks and busses. The point is, the railroads pay for everything they get, and then some, while the highway carrier gets the public to provide him with everything he needs apart from rolling stock and the meager housing his business requires. His contribution in this direction is wholly nominal, everything considered. The highway carrier is today's white-haired boy because he is a sort of cousin to peripatetic America which rolls hither and yon on rubber. Popular sympathy is with him. It would be impossible to "expose" him, because the *facts* concerning the cost of his service would apply substantially to the operation of private cars. I have had ample proof heretofore that our people do not like to be told what the privilege of rolling around on rubber *really* costs them. There is only one answer: abolish taxation on all common carriers except for use or occupation of the public domain.

—ALBERT J. FRANCK,
Far Rockaway, N. Y.

The Detroit Plan

YOUR review of the Detroit Plan appearing in the February 27th issue of the FORTNIGHTLY interested me very much, and I appreciate your sympathetic attitude towards the rather ambitious venture upon which we are about to embark.

This plan is the outgrowth of a serious effort on the part of the city administration and ourselves, finally acting together in the spirit of coöperation, to compose certain rather wide differences between us which had reached the stage of litigation. The impelling motive which brought about this effort for an amicable adjustment was the desire by both parties to have natural gas introduced into Detroit under the most auspicious conditions.

Substantial concessions were made. The city abandoned its effort to restrain an increase in our rates which were promulgated in April last, and also its attempt to charge this company $1,500,000 per year for the use and occupancy of the streets. The company on the other hand agreed to a definite limitation of its earnings below those which were attained in previous years and readily again attainable under normal business conditions.

Thinking you might be interested, I am enclosing a pamphlet which sets forth in printed form the consent decree in the circuit court and the consent decree in the Federal court, which put into effect the Detroit Plan. As to the legality of all of this there seems no doubt, and you will note that the circuit court retains jurisdiction in the matter.

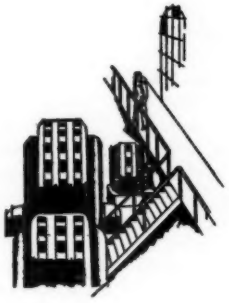
I NOTE your comments on the possible difficulties and cost of distributing consumer dividends by check, and it may well prove after trial that this method is unwieldy and a modification necessary. However, you will

note under § VII of the decree that the company may, at its option, credit the consumer's account in lieu of actually mailing checks. You will also note that the distribution of excess earnings is provided for only after the earnings have been acquired, whereas under the Washington Plan rates may have to be distributed after a good year even in the face of future declining business conditions. We here favor the former method.

I hope the Detroit Plan will stand the test of time, and am glad you agree with us that the method adopted for fixing the rate base on a basis of earnings may have some future influence in providing an easier and less costly means of establishing rates. I devoutly hope so, for after years of experience with and observation of rate cases, their laborious methods, legal technicalities, and unbearable costs, I, though in no sense a New Dealer, am at times almost ready to vote for any sort of a constitutional amendment if for no other reason than to get rid of our old friend Smyth *v.* Ames.

I trust the enclosed pamphlet will interest you and I take this opportunity to express my appreciation to you and your associates for your admirable magazine, which for many years has been of real service and value to those of us who live on the firing line.

—W. G. WOOLFOLK, *President,*
Detroit City Gas Company.



The Ideal Aim of Private Ownership

"A RÉGIME of private enterprise and political liberty is, I am convinced, basically sounder than the Communism and the Fascism that today stand as its most contagious alternatives, but capitalism must, if it is to survive, effect one deep and drastic change in the still regnant philosophy it inherited from the Adam Smiths who rationalized its initial impulses. It must become as mass-conscious as collectivism. It must, generally and not sporadically, put the social function of industrialism above the special interests of industrialists. Its primary and its secondary objectives must change places. It must make the increase, the enrichment, and the stabilization of life for the millions its first business. Private profit must be found as a by-product of the statesmanlike administration of this social function. Capitalism must, I repeat, become as mass-conscious as collectivism. For it becomes increasingly the mood of mankind to judge industrial systems by this criterion."

—GLENN FRANK, *President,*
University of Wisconsin.

Financial News and Comment

By OWEN ELY

Pacific Gas & Electric to Benefit by Record Refunding

PACIFIC Gas & Electric Company is the largest coast utility, with assets in the neighborhood of $725,000,000. It can also claim to be one of the largest *operating* electric and gas companies in the United States, being topped slightly by Consolidated Gas of New York. (It is taking measures to merge its few remaining subsidiaries, and operations are highly unified.) It serves a territory of some 89,000 square miles in central and northern California (including San Francisco, Sacramento, Oakland, San Jose, and Fresno, together with large rural areas); and operations being entirely intrastate, it is practically exempt from the provisions of the Utilities Act of 1935.

The company is planning to merge with Great Western Power Co. of California and Sierra & San Francisco Power Co., in which companies it has a very substantial interest (it owns all of the common stock of Great Western Power, together with most of the preferred; and all common stock of the Sierra Company). Technical difficulties have delayed absorption of San Joaquin Light & Power Co. Its interests in certain companies were acquired in 1930 from the North American system which at the same time acquired a substantial block of stock in Pacific Gas.

Pacific Gas & Electric has had a record of consistent growth since organization in 1905, benefiting by the substantial gains in California's population. It now furnishes electricity, gas, and in some areas other services to a population of nearly 3,000,000, electricity providing about 70 per cent of revenues and gas about 29 per cent.

At the end of 1934 the Pacific Gas system owned 47 hydroelectric power plants with installed capacity of 1,141,115 horsepower and 11 steam plants with a capacity of 502,412 horsepower. In 1934 peak demand was about 60 per cent of installed capacity, average load being about 62 per cent of maximum demand, considered a satisfactory ratio. Interconnections are made with Southern California Edison, Sierra Pacific Electric Co., and California-Oregon Power Co. It is evident that the company is well equipped to handle additional growth in electric sales.

NATURAL gas is obtained from the Kettleman Hills field, one of the largest natural gas areas in the world, and there are additional reserves in the Buttonwillow field. Gas is transported over two main pipe lines, one entirely owned and the other jointly owned with Standard Oil of California. While the company owns 15 gas manufacturing plants these are mainly "standbys," about 97 per cent of its gas customers being served with natural gas. Owing to the low cost of gas more than one seventh of total output was used in 1934 for electric generating plants. The gas business is very stable, about two thirds being to domestic consumers, 19 per cent to commercial and miscellaneous users, and 15 per cent industrial.

Introduction of natural gas in 1929 has resulted in large savings to customers.

Electric revenues are diversified, 31 per cent in 1934 being sold to domestic customers, 29 per cent to wholesale-commercial, 17 per cent to retail-commercial, 13 per cent agricultural, and 10 per cent miscellaneous. Average annual consumption by homes and business establishments has increased from 510 kilowatt hours in 1921 to 975 in 1934.

The company's rates are very low. It has frequently lowered its electric rates, particularly benefiting commercial and residential customers, the average revenue per kilowatt hour for this class of consumers having declined in the past twelve years from about 7 cents to 4¼ cents. A promotional rate offer was made during 1935 by which any domestic or commercial customer could obtain a discount of one half on any additional electricity consumed, as compared with the same month of the previous year.

In 1933 the company for the first time in its history challenged a rate reduction order of the state commission for a cut in gas rates amounting to over $2,000,000 a year (about 10 per cent). The Federal court at San Francisco recently declared the order void as violating the "due process" clause of the Constitution. Following the decision, the company made a voluntary reduction in rates (not retroactive but larger than the original cut).

The capitalization consists in round amounts of $296,000,000 funded debt, 5,235,000 shares of $25-par first preferred stock (5½ per cent and 6 per cent), and 6,261,000 shares of common stock. The company has been engaged in an extensive refunding program; last year's program aggregated about $95,000,000 and the company has recently been negotiating for a $90,000,000 refunding issue. While the exact amount of the annual saving to stockholders resulting from the total $185,000,000 refinancing is difficult to estimate, it would seem likely to average in the neighborhood of 1 per cent or $1,850,000, which amount is equivalent to about 30 cents a share. Should the amount of the impounded 1933–36 earnings from gas sales (released by recent court order, unless appealed to higher courts) be allocated entirely to 1936 earnings, this would amount to an additional 80 cents a share, but it may be credited to surplus.

The company's financial and accounting policies are considered conservative, and it pioneered in developing customer-ownership of securities.

Possible adverse factors in the company's future might be (1) the earthquake hazard, considered unimportant, and (2) competition from huge power and irrigation projects sponsored by local, state, or Federal agencies. These include the Central valley project, the Sacramento municipal plant, Boulder dam, and the Hetch Hetchy water development. Thus far the $170,000,000 Central valley project, while authorized in a 1933 state election, has not succeeded in attracting necessary funds from state or Federal agencies. The proposed Sacramento plant involves only about $12,000,000 and is tied up in litigation. Boulder dam competition does not seem likely to prove serious since most of the power will be absorbed in southern California. The Hetch Hetchy power question, involving the question whether the company shall continue to distribute power generated by the city of San Francisco in connection with its water supply project, is perhaps somewhat more serious (Secretary Ickes has been urging a municipal plant). The amount paid by the company to the city is in the neighborhood of $2,000,000 per annum, and the gross revenues from customers would be a substantially larger amount, but still relatively small perhaps as compared with the company's 1935 gross revenues of over $92,000,000 from all sources.

The company's stocks are selling currently as follows:

	Price about	*1935–1936 Range about*	*Yield about*
$1.50 Preferred*	31	20–32	4.9%
$1.375 Preferred*	28	18–28	4.9
$1.50 Common	34	13–38	4.4

*Traded on N. Y. Curb.

The noncallable preferred stocks, on which $4.41 a share was earned in 1935 (about 3 times the average dividend rate) would seem to offer a very attractive yield at current levels and the $25 par makes them suitable for small investors. The common at its current price is selling for about 14 times the 1935 earnings, which compares with a general average for utilities of about 17. According to Moody's Service, "enlargement of the dividend is a distinct possibility."

New Financing

UTILITY financing in the fortnight ended March 13th consisted only of two small Indiana telephone issues (referred to in the last FORTNIGHTLY). On March 16th a syndicate headed by Morgan, Stanley & Co. offered $7,178,500 Central Illinois Light Co. first and consolidated 3½s due 1966 at 104. Several very large issues will be offered in the latter half of March, including $55,830,000 Consumers Power Co. first mortgage bonds due 1970 (Morgan, Stanley & Co. and Bonbright & Co.); $90,000,000 Pacific Gas & Electric Co. bonds (Blyth & Co.); and $75,000,000 Eastern Gas & Fuel first 4s, 1956 (First Boston Corporation and Mellon Securities Co.). Prospective smaller issues include $2,700,000 Springfield City Water Co. first 4s of 1956 and several issues of bonds and notes of the Iowa Electric Co. and Iowa Electric Light & Power Co. (aggregating $9,640,000) to be offered by Harris, Hall & Co.

Oklahoma Natural Gas Co. directors have approved the refinancing plan proposed by Stone & Webster and Blodget, which will be ratified by stockholders April 15th. The plan will relieve the company of heavy charges and sinking-fund requirements, together with serial maturities during the six years beginning next November. It is proposed to issue $20,000,000 first mortgage bonds with a coupon rate of 4 per cent to 4¾ per cent and $11,000,000 convertible debentures with a coupon of 4–5 per cent, while convertible preference stock will be exchanged for serial notes. Control of the company would be acquired by a group headed by Stone & Webster, Inc., the present holding company, Gas Utilities Co., being dissolved.

The International Telephone & Telegraph Corporation refunding program (which will also provide for retirement of bank loans) is now taking form. It is anticipated that $35,000,000 convertible debenture 3½s will be offered to stockholders, the issue being underwritten by a group headed by Morgan, Stanley & Co. The new bonds will be convertible into common stock at $20–$25 a share, according to the *New York Times*, but exact details and the time of the offering will depend on market conditions over the next few months.

Equities in New Bus Lines in New York City

THE appearance of attractive new busses in the Wall Street district, replacing dingy and obsolete trolleys, has aroused some curiosity as to how an investor may obtain an equity interest in the new transportation facilities. The New York City Omnibus Corporation, which has substituted busses for surface cars on Broadway, Madison avenue, and Eighth avenue (with further replacements pending) is one of a number of interrelated companies involved in New York's trolley-bus picture. The best method for obtaining an equity in it would seem to be to purchase New York Railway Company 6 per cent income bonds on the Stock Exchange. The proposed reorganization of the latter company provides that the holder of each $1,000 bond would receive 10 shares of New York Omnibus stock and the right to purchase an additional 12 shares at $10 per share. At the current price of about $43 for the

bonds, the corresponding cost of the stock (if and when the plan is consummated, and including exercise of the rights) would be about $25.

Another method of obtaining an equity would be to buy stocks in the "top" holding company, Omnibus Corporation, whose voting trust certificates are currently selling on the New York Stock Exchange for about $22 a share; the stock pays no dividends, however, and a deficit of 4 cents was reported for 1934 (1935 not yet available). But this method seems less attractive because of the complicated set-up, and the combination with other bus lines. Omnibus Corporation owns directly or through Fifth Ave. Bus Securities Corporation about a 96 per cent equity in the New York Transportation Company, which owns all the stock of the Fifth Ave. Coach Company which, in turn, owns 12 per cent of the New York Railways prior lien 6 per cent bonds, 54 per cent of the income bonds, and all the common stock (the latter will probably be wiped out in reorganization). As indicated above, the latter in reorganization plans to merge with its subsidiary, New York Omnibus. Eventually each common share of Omnibus Corporation will probably represent an interest in ⅜ of a share of New York City Omnibus. Quoting from "The Investor's Column" of the *New York Sun:*

> Purchase of Omnibus Corporation stock as a means of acquiring an interest in the new bus lines is the less direct of the two methods. By this means buyer would also obtain an interest in Fifth Avenue Coach as an operating company and in the Chicago Motor Coach Corporation. The latter is not being operated profitably. Fifth avenue Coach as an operating company already has lost much business to the Madison avenue bus line, which is operated on a 5-cent fare. More competition will come when New York City Omnibus puts busses on Sixth avenue to replace the trolleys of the New York Railways.

The Bell System

THE final report of American Telephone and Telegraph Co. for 1935 showed earnings of $7.11 compared with $5.96 in 1934 on a consolidated system basis. A. T. & T's actual net income, based on dividends from its subsidiaries, operating returns from long-distance toll lines, and other income, amounted to $6.74 against $6.52. This was the first time since 1931 that share earnings on a system basis have exceeded the company's net income.

The 466,500 gain in telephones compared with an increase of the 298,000 in the previous year, but the total number in service at the end of 1935 (13,400,000) was still 1,600,000 below the 1930 peak. Local calls increased 4.1 per cent and long-distance and toll calls 4.6 per cent.

Western Electric Company reported a surplus of about 44 cents per share for 1935 against a deficit for the previous year. However, plant operations at the end of 1935 were still at only 27 per cent of capacity.

Taxes of the Bell System amounted to over $7 per telephone and are expected to increase about $9,000,000 in 1936.

System assets were in excess of $5,000,000,000 and there were some 270,000 employees with a payroll of over $438,000,000. Stockholders numbered 657,000 with average holdings of 28 shares.

THE huge cash resources of American Telephone and Telegraph Co. —some $212,000,000 in cash and government securities at the end of 1935— is standing the Bell System in good stead in connection with the system's refunding operations. The cash reserve serves to fill the gap between redemption of old bonds and the receipt of funds from the new refunding issues. For example, there was a gap of two weeks in the Illinois Bell issue and three weeks in that of Southwestern Bell; and according to the *New York Sun* some six weeks of standby credit will be required for the Pacific Telephone financing now contemplated.

The parent company's cash fund (to which may be added a portion of its $152,000,000 pension trust fund) is al-

so useful for other purposes, such as surety bonds, guaranteeing rate refunds for subsidiaries in connection with rate litigation.

Results of the FCC investigation of the Bell System, which has been underway for some time, is now being revealed through public hearings. The system's financial and accounting methods have been so conservative that it seems very unlikely that anything approaching a financial scandal can have been unearthed through the commission's costly research.

Utility Developments at Washington

THE Federal Power Commission has temporarily authorized 638 utility directors to hold "interlocking" positions, and further hearings are in progress. One hundred eighteen applications have been dismissed, 19 closed owing to withdrawals, etc., 129 dismissed for lack of jurisdiction, and 26 were still to be heard as of March 1st.

The FCC is currently in the limelight with its A. T. & T. hearings and the reverberations of its wholesale seizure of telegrams for Senator Black's utility lobby investigating committee.

PWA Administrator Ickes reported to the Senate March 9th that about $76,000,000 had been allotted to 269 non-Federal electric power projects. As of February 15th, 60 of these were completed, 81 were under construction, 59 were in litigation, and the others were in preliminary stages. The 269 allotments were made in 43 states and Alaska. Ninety-three were for new generating plants or distribution systems, 117 for additions to existing plants, 3 for transmission systems, and 56 for power plants for existing institutions.

Mr. Ickes has charged that the Duke Power Co. is delaying appeal to the Supreme Court of its suit to enjoin construction of a $2,800,000 plant at Greenwood, South Carolina, having been "rebuffed" in the circuit court of appeals some weeks ago. Government attorneys have indicated their opinion that the power companies prefer to bring to the Supreme Court a suit involving a subsidiary of Cities Service Corporation, Washington Power Co. This company obtained a favorable decision in the Federal district court in Idaho, the case now being before the circuit court of appeals at San Francisco.

Secretary Ickes asserted that the Central Vermont Public Service Commission has offered "inducements" to the board of selectmen at Brandon, Vermont, to cancel their contract for construction of a PWA plant, and was quoted as saying that "he just wanted to show the patriotic nature of our enjoiners." As of the same date it was reported that the town of Brandon had voted against a PWA plant.

PRESIDENT Roosevelt, on March 4th, pushed a gold telegraph key to begin operation of the $36,000,000 Norris dam of the TVA development. At Norris, Tennessee, sirens shrieked and TVA officials made eulogistic speeches. The dam is the fourth largest in the world and when generating equipment is ready for operation about August 1st, it will have 132,000 horsepower capacity.

The Senate on March 5th passed the Norris Bill for a 10-year $420,000,000 rural electrification program, after various amendments. The REA would be authorized to make 25-year 3 per cent loans to states or their subdivisions, and to coöperatives or limited dividend organizations, both for construction of generating and transmission systems and to finance wiring of individual houses (such local loans would also bear interest at 3 per cent and would be amortized, payment being made with monthly electric bills).

President Roosevelt, March 11th, sent a message to the Detroit Seaways Conference advocating "early undertaking" of the Great Lakes–St. Lawrence Seaway project, the 1932 Treaty for which failed of ratification by both our Senate and the Dominion Parlia-

ment. The President described the project "for the dual purposes of navigation and power" as an important part of the administration program, stating that "it will enable us to take the next step to extend to the Northeast the benefits already assured from works completed or under construction in the Tennessee valley in the Southeast, at Boulder dam in the Southwest, and on the Columbia river in the Northwest."

MAJOR General Martin, chief of army engineers, reported to the conference that transportation savings on the Seaway might run as high as $70,000,000 a year. The American share of the total cost of the huge program he estimated at $260,000,000, of which some $90,000,000 could be recovered from New York for power, making a net investment of $170,000,000 on which the estimated savings in transportation costs would constitute a "magnificent return." Press reports did not indicate the basis for these estimates.

Regarding the power phase of the project, the President appeared to be somewhat on the defensive in his message, stating:

> The use of electric energy is gaining so rapidly today that no sane person would dare to assert that after the seven years required for construction of works St. Lawrence power would provide a surplus above actual needs. As a matter of fact, careful studies have shown that there will be a serious shortage of electric energy in the Northeast before the project can be completed.

No mention was made of Passamaquoddy, which if completed would also provide considerable power.

N. Y. Transit Unification Encounters Further Obstacles

WHILE some progress was effected last year in New York city's long struggle for the unification of subway and elevated properties, the many obstacles still remaining make it an open question whether the Seabury-Berle program has a much better chance of success than the various Untermeyer proposals of previous years.

The B. M. T. "plan" of over a year ago, and the Interborough-Manhattan proposals of last fall, were not final agreements between the city and the security holders but merely working plans reflecting majority views. At least one Manhattan committee has indicated dissatisfaction with the plan, and the old problem as to how to keep books properly for I. R. T.'s Manhattan Division (which includes both Manhattan Co. and Interborough trackage) has apparently not yet been solved, affording Manhattan security holders some basis for complaint regarding their treatment. However, if Judge Mack should accede to the Interborough's request to terminate the Manhattan lease it is possible that the accounts might be put on a better cost basis, to show whether the red ink is in the Manhattan properties or the Interboro extensions.

The transit commission, now considering the unification plan, has apparently not shown any great enthusiasm for it, and the board of estimate also seems doubtful of its advantages. The present Democratic majority is said to fear that the employees of a unified, publicly owned system would bring pressure to bear on the legislature to obtain civil service status and resulting benefits such as higher wages, an 8-hour day, and pensions. Pressure by the public for universal free transfers might be another complication and it is feared that the resulting inroads against net earnings would go far toward wiping out the economies resulting from bond refinancing and consolidated operations (it has been estimated that the city would obtain a margin of $9,000,000 to $12,000,000 over operating expenses and fixed charges). This would therefore leave the city still saddled with the old traction dilemma of high taxes or an increased fare (particularly in view of the losses incurred by the independent subway).

What Others Think

Let the Consumer Beware

For a good many years now, and especially since the more social-minded New Dealers have come to live in Washington, we have heard the complaint that "everybody is organized but the consumers." On the surface it does seem somewhat anomalous that with all the industrial organizations, business organizations, labor organizations, farmers' unions, professional groups, and other class alliances for mutual economic protection, the only one who so far has failed to join up in a big way to protect his economic interest seems to be the very chap who pays for the whole show and keeps it going—the consumer.

When we speak of the consumer, however, we necessarily include every one of us who eats, sleeps, or lives in this vale of tears, and in a way that partially explains the anomaly. We are so much more interested in protecting our individual stake as a merchant, farmer, or industrialist that we are not equally concerned about our status as the buyer of clothing, vegetables, or machinery, respectively. In other words, the average citizen is more careful about guarding his earning power than his buying power. Just as he is willing to pass on the costs of his own business as much as possible to the ultimate purchaser of *his* products, so also is he apt to be more tolerant of the principle of *caveat emptor* when he himself purchases the products of others.

This somewhat sporting arrangement of economic log rolling probably worked out fairly well back in the days of more simplified provincial commercial life before the corporation swept away the proprietorships and shifted huge blocks of our citizens from the status of producer to that of employee. But when one is merely paid wages to produce a commodity, one is likely to be less concerned with the price it brings and, conversely, more concerned with the prices of commodities one must buy. All this is very elementary, of course, but it explains in a general way why the idea of consumer alliances has been taken up so seriously by social enthusiasts during these days of reform.

Assuming the validity of a need for organizing consumers for their own protection, however, one runs slam-bang into the difficulty of administration. Who shall do the organizing? Who shall decide and advise the consumer as to what he should buy, and what he should pay for it? There are those who, like the energetic Dr. Walton Hale Hamilton of the Consumers Advisory Division of the U. S. Labor Department, think that the government should exercise increasing powers in this field; and there are those other students of the subject, such as F. J. Schlink of Consumers' Research, who feel that voluntary consumer coöperation would effectively protect his interest. There are some, such as Gerard Swope, president of General Electric, who believe that enlightened industrial statesmanship could accomplish voluntary practices for the protection of consumers. Finally, there are those, such as Miss Ruth Brindze of *The Nation,* who apparently believe in all these or any combination thereof that can be mustered for the protection of the consumer—in other words, the more protection the better.

Then there is the question of economic trends, which the professional consumer champions never seem to analyze completely to their own or anyone else's

satisfaction. Assuming that there is a need for protecting the average buying citizen against exploitation—through ballyhoo—in the purchase of goods concerning the exact qualities of which he is naturally ignorant, what provision will be made for the unpredictable changes in purchasing trends that would inevitably result?

If John Public, for example, is informed by his protecting agency that this article is no good and that one is poor, and so forth, he will not buy this and buy much less of that, which may put some businesses on the spot. However, John Public will probably spend his money for something. What will it be? Will economic results be beneficial? Industrial writers had notions many years before consumer protection was heard of that industry must to some extent "give intelligent direction" to public taste so as to avoid industrial waste. Call this propagandizing if you will, but such a liberal economist as John Flynn observed over five years ago that the textile and clothing industries might be constantly faced with chaos if not ruin, if it left its market to the whimsical shifts of undirected public opinion.

Again, there is the advertising industry to think about. There is no escaping the fact that advertising is one of our largest business enterprises. To destroy the best part of it by deflationary official or semiofficial bulletins on what to buy and what to pay for it would blast an ugly hole in our economic picture. Finally, there is the undeniable fact that advertising does create consumer demand that did not exist before, thereby releasing new purchasing power in the marts of trade. In his recent interesting book, "Eat, Drink and Be Wary," F. J. Schlink unfortunately fails to touch on these points, although he does say some pretty mean things about commercial frauds, especially in the field of food products. Another recent book on the need for consumer protection by Ruth De Forest Lamb is more restrained and factual.

"And what," muses the reader of PUBLIC UTILITIES FORTNIGHTLY, "has all this got to do with utilities?"

One would think that consumer protection had nothing to do with utilities. In fact, one would ordinarily think that if there is one field of commercial operation where consumers are protected by governmental regulation, it is in the field of public service. Any fair appraisal of the constantly improving quality of utility service, as compared with the general downward trend in utility rates under the auspices of commission regulation, would appear to confirm this view.

And yet there are some who do not think so. In a number of places there have sprung up utility consumers' leagues. One of these organizations recently issued a pamphlet violently attacking the telephone utility in New York city, inferring among other matters that the utility systematically overcharges its subscribers on metered calls and short changes them on time. The pamphlet appealed for support of several legislative measures, one of which would require telephone metering instruments in the homes of subscribers. It also stated an offer to help carry on complaints against all utility service:

> A free service complaint bureau has been established to handle overcharges, abuses, injustices, inefficient service, evil practices, etc., for the protection of all utility users in this state, namely: telephone, gas, electricity, water, and steam services.
>
> You are invited to send a signed complaint to the league, or to Public Service Commission, 80 Centre street, New York city. It will be investigated and a report of findings sent to you without cost or expense.
>
> Attach with complaint bill or bills in dispute, with last two months' bills.
>
> (Submetered electric users should send complaints direct to the league, for there is no government supervision over these outlaw companies).
>
> When sending your complaint to the league, please make it read: "I, or we, authorize the Utility Consumers' League, 686 Lexington avenue, New York city, to represent my (our) interest in the following complaint":
>
> *Note*—Complaints will not be received by 'phone—*Use the U. S. Mails.*

MESSAGES MAY BE IN CODE FROM NOW ON

THIS reviewer kept reading through this unusual piece of literature, looking for a familiar paragraph that might throw some light on the organization's activities. Finally he found it right at the end. It stated:

The Utility Consumers' League is making every effort to carry on its broad utility programs and activities for your benefit and protection, therefore, we frankly appeal for public support to put these and other worthy principles into practice and effectiveness.

It is now at the point where it must openly appeal for financial assistance to those outside its own circle, namely, the general public.

All utility users are eligible to join this consumers' organization, *viz:* telephone, gas, electricity, water, and steam services.

If you are unable to take an active part as a member, as a representative in your community, or lend your services to our cause, you can do your share by sending a nominal contribution.

The Utility Consumers' League, of 686 Lexington avenue, New York city, is a nonpartisan, independent, progressive organization. It has been in existence for eight years. It is financed by voluntary contributions.

One inevitable problem about these organizations that set up to protect the consumer is how to tell the honest and able groups from the fly-by-night variety. Unquestionably such organizations as Mr. Schlink's Consumers' Research, Inc., deserve credit for sincerity of purpose, whatever one might think of the whole idea of such undertakings on behalf of the buying public. (For aught this reviewer knows to the contrary the Utility Consumers' League mentioned above is in the same category.) But there is also unquestionably a fine opportunity for outright racketeering by less scrupulous promoters. If the movement grows, the time may come when the consumer will need as much protection against some of these consumer leagues as he does against the evils they are supposed to suppress. And, after all, what will most of the real utilities consumers think about this idea of somebody else telling them how to spend their money? Can they "take it?"

—F. X. W.

AMERICAN CHAMBER OF HORRORS. By Ruth de Forest Lamb. Farrar and Rinehart. Price $2.50.

EAT, DRINK, AND BE WARY. By F. J. Schlink. Covici-Friede. Price $2.00.

UTILITIES CONSUMERS' LEAGUE. Release No. 50. March 4, 1936. 686 Lexington Avenue, New York, N. Y.

Are the Conservatives Getting Soft?

ONE of the most penetrating analyses of the apathetic attitude of the American *bourgeoisie* that has been written or dared to be written in the name of "American liberalism" during the last five years, appears to be that of Harold Lord Varney in the March number of *The American Mercury,* under the title, "Are the Capitalists Asleep?"

Mr. Varney takes sharp issue with those propagandists for organized minorities who insist that "vested interests" or "entrenched greed," or "special privilege," have kept their respectively nefarious fingers on the throat of Congress, enslaved the press, and generally run things in this star-spangled land for their own selfish ends. Nothing could be farther from the truth, according to Mr. Varney; the propertied classes have not only been impotent as far as influencing the affairs of government, but in addition they have been the butt of practically every raid that has been conducted on Washington by lobbies that really mean something. Says Mr. Varney:

Although tarred and feathered daily since the crash of 1929, the average American capitalist has consistently refused to lift a protest in defense of his abilities, his accomplishments, or his traditions. The picture of high-pressure capitalism as a powerful force ruthlessly directed by magnetic minds has proved to be only a *katzenjammer* of the radicals' imagination. No such domineering army, flaunting the banner of Big Business, exists: its potential leaders are hiding under flower-pots in storm cellars, and its panicky ranks have scattered before the onslaught of a ragged handful of Reds.

Indeed, the ease with which radical propaganda has captured the publicity spotlight must have astounded the Left-wing chieftains themselves: for if they fully comprehended the confused state into which their capitalist enemies have fallen they would now be whooping up even more savage assaults upon the structure of democratic government, in the name of Karl Marx, the New Deal, and the More Abundant Life. But the Comrades, of course, are not so astute. Nevertheless, their propaganda continues to be the loudest, if not the most effective,

in the political and economic arena today. If they never accomplish anything else, the radicals, basking in the refulgence of Dr. Roosevelt's Thirty-Billion-Dollar Smile, have succeeded in stirring up the most overwhelming din ever to assail the eardrums of a country which is profoundly conservative at heart.

JUST why our propertied classes should adopt such a turn-the-other-cheek attitude is the subject of Mr. Varney's study. First of all, he believes that the lethargy of the capitalists (meaning those who believe generally in the capitalistic system) is due to their "sublime confidence in the perpetuity of that system." Prior to the New Deal, the radical was looked upon by the business man with contemptuous tolerance. Now faced with the consequences of such complacency, capitalists "swing to the other extreme" and talk along fascist lines, although still unwilling to concede that "radicalism is an incalculable force in America."

Another reason found by Mr. Varney is the fact that the leaders of business are by no means a unit in opposition to the "collectivist drift." Blindly enough, few business men think of themselves as components of a "capitalistic system." Instead the average industrialist thinks of himself in terms of steel, coal, motors, or electric power. Beyond perfunctory support of such organizations as the Chamber of Commerce of the United States, he confines his attention to this own bailiwick and lets his industrial brother take care of himself. In contrast, Mr. Varney points to the united front of the radical group. He states:

> A sound illustration of this unconcern was presented during the fight over the Wheeler-Rayburn utilities bill in the first session of the present Congress. Anyone familiar with the long campaign waged by such organizations as the Public Ownership League, the People's Lobby, and the National Popular Government League would comprehend that the proposal to bring all holding companies under Federal regulation was the first step in an elaborate plan to detach the thirteen-billion-dollar utility industry from the free enterprise system and transfer it to the area of collectivism. Whatever the past shortcomings of some of the companies, there could be no question that an astute capitalism would have rallied its full strength to halt this perilous New Deal program. Victory for the government would surely constitute a precedent to embolden the collectivists to further raids upon free enterprise.
>
> Yet what actually happened? There was no militant invasion of Washington by business leaders to serve notice upon politicians that the legislation was preposterous. The utility men were left to fight it out virtually unaided, and in the end, they lost. It is illustrative of the parochialism of American business that the one major force which did rally against the Roosevelt policies was the bituminous coal industry. But, characteristically, the motive of the coal operators did not concern the future of free enterprise. They attacked the New Deal program because the encouragement of hydroelectric power would narrow the market offered by steam plants for bituminous coal.

MR. Varney feels that the timidity of many corporation executives is the result of the passing from the modern scene of the promoter and proprietor type of industrialist. The men now at the helm of business are concerned chiefly with preserving their jobs by maintaining uninterrupted dividends to stockholders. They have little disposition to engage in controversy with Left-wing propagandists.

A final reason given by the author for capitalism's impotence is the fact that it is without the benefit of expert propagandists. Viewed with irony are the outcries of socialists, such as Upton Sinclair, against the "capitalist press." The capitalists, according to Mr. Varney, have the least influence of any comparable group on the press today. Conservative papers go out of their way to kowtow to certain radical writers and speakers in order to indicate "tolerance." Where is similar concession made in the pages of radical organs which incessantly protest martyrdom at the hands of the mythical capitalistic press? The writer states:

> An amazing number of Left-wingers occupy key position today in literature and journalism. They stand at the portals of intellectual advancement in many professional fields. There is scarcely a so-called capitalist newspaper whose staff is not honeycombed with communists messiahs who exercise an unrecognized veto power over

The Montana Record-Herald

WHAT GOOD ARE UMPIRES ANYWAY?

the treatment of news. The book review departments of the leading newspapers and magazines are notoriously in the hands of Left-wingers who extol the pink and red authors and damn the reputations of those who are *persona non grata* to radicalism. In this connection, it is symptomatic that the featured book reviewers, John Chamberlain and Lewis Gannett, of the two leading conservative newspapers of New York city, the *Times* and the *Herald Tribune*, are men of outspoken radical sympathies.

In the theater, the same situation is developing. Such radical-sponsored organizations as the Group Theater, the New Theater League, the Theater Union, and, to some extent, the Theater Guild, offer extraordinary opportunities for early recognition to

sophomoric playwrights. When an amateur radical dramatist such as Dr. John Haynes Holmes writes an inexpert *If This Be Treason*, he secures production by the Theater Guild and enjoys a blare of publicity from radical and liberal dramatic reviewers which secures national attention. It is superfluous to ask if an inexperienced conservative playwright of equal talent could command such notoriety.

MR. Varney also observes that Left-wing organization has invaded the colleges. He claims that a mediocre professor, in danger of being fired for incompetency, has only to espouse a radical cause and scream "Nazism" every time the dean of the college looks cross at him in order to be protected by militant, efficient, well-organized radical groups.

Conversely, there is no glamor, and no such protection, for those who "go conservative" on the campus,—only sneers from the better organized and more articulate Leftists. It is scarcely surprising, according to this author, that "this intellectual reign of terror" has resulted in an increasing number of both professors and students "taking up" radical movements.

What is to be done about it? First of all, the author suggests that conservative leaders must "awake from the dream that the intellectual challenge of the Left is beneath reply. . . . Capitalism must train and support inspired defenders." It must dramatize its own message instead of relying on cold statistics of accomplishment which ought to be the best arguments, but seem to be ineffective. Such leadership for the Right, says Mr. Varney, cannot come from the "depressing mumblers" or "anti-Red racketeers." It must be undertaken by twentieth century industrial Savonarolas who will be controversialists with ability to swap punches on even terms with the pseudo-intellectuals of the Left. Finally, they must have "full and sympathetic support of American capitalism."

—F. X. W.

ARE THE CAPITALISTS ASLEEP? By Harold Lord Varney. *The American Mercury.* March, 1936.

Notes on Recent Publications

AN ENGINEER LOOKS AT RURAL AMERICA. By Morris Llewellyn Cooke. *The Journal of Land & Public Utility Economics.* February, 1936.

EXCESS DEPRECIATION RESERVE AND RATE CONTROL. By Pincus M. Berkson. 36 *Columbia L. Rev.* 250. February, 1936.

FEDERAL REGULATION OF HOLDING COMPANIES —THE PUBLIC UTILITY ACT OF 1935. 45 *Yale Law Journal* 468. January, 1936.

HOW TO PROTECT BUSINESS IDEAS. By William H. Leahy. Harper & Brothers. New York. Price $2.50. 157 pages. 1936.

MUNICIPAL AND STATE SOCIALISM. By F. G. R. Gordon. *National Republic.* December, 1935. (The well-organized drive to relieve the public of their hard-earned savings has proceeded with vigor for years. Jilted promises have not materialized as successes in action. Seventh of a series of articles by Mr. Gordon on Government in Business.)

PUBLIC UTILITY VALUATION AND THE DEPRECIATED DOLLAR. By L. Edward Herrmann. 5 *John Marshall L. Journal* 17. September, 1935.

RAISING THE PUBLIC'S EVALUATION OF GAS. By Frank H. Adams. *Gas Age-Record.* October 26, 1935.

THE CONSTITUTIONALITY OF THE TENNESSEE VALLEY AUTHORITY. 5 *Fordham L. Rev.* 114. January, 1936.

THE GEOGRAPHIC DISTRIBUTION OF THE PHYSICAL WEALTH OF THE UNITED STATES. By Robert Rutherford Doane. *The Annalist.* November 15, 1935.

THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935—II. 30 *Illinois L. Rev.* 648. January, 1936.

WHAT NOW OF TELEVISION? By Martin Codel. *Broadcasting.* December 15, 1935.

WHAT THE PUBLIC UTILITY ACT MEANS TO AMERICAN BUSINESS. Released by Committee of Public Utility Executives, Washington, D. C. October, 1935.

The March of Events

Predicts St. Lawrence Canal

PRESIDENT Roosevelt predicted the "early undertaking" of the Great Lakes-St. Lawrence deep channel project in a message read March 11th to the Detroit Seaway Conference by Senator Key Pittman (D.) of Nevada.

Pointing out that neither the United States nor Canada has ratified the 1932 treaty, which would permit work on the vast project to go forward, the chief executive declared that "something further than mere resubmission of a treaty is called for." Mr. Roosevelt expressed confidence that, in view of the policy of coöperation between the two countries, agreement on the terms for completing the 2,000-mile channel for ocean-going vessels "should present no insuperable difficulties."

Senator Pittman, who is chairman of the Senate Foreign Relations Committee, predicted that Senate ratification of a St. Lawrence waterway treaty, which failed by 13 votes in 1934, will be accomplished at the next session of Congress.

Describing the St. Lawrence navigation and power improvement as "an important part of the program of the present administration," the President declared, "it will enable us to take the next step to extend to the Northeast benefits already assured from works completed or under construction in the Tennessee valley in the Southeast, at Boulder dam in the Southwest, and on the Columbia river in the Northwest."

Higher Rates in Smaller Communities

COMPARATIVELY higher rates for electricity in smaller communities was indicated by the Federal Power Commission in the third of a series of rate reports. "For 25 kilowatt hours," the report said, "towns under 250 in population paid $2.33, while cities over 250,000 paid $1.55. Towns from 250 to 999 population paid $5.59 for 100 kilowatt hours, against $4.40 for the larger cities; for 250 kilowatt hours, small towns paid $9.56, against $8.44 in the large cities."

The commission found a "challenging problem" in the "wide divergencies" of electric rates in various parts of the nation. It said the answers which ordinarily might be given to explain the situation are not enough. No new explanation was offered, however. The report noted that in 1935 the highest bills were paid in the New England, Middle Atlantic, West South Central, and Mountain areas.

The lowest average bills were found in California and Washington; the highest in New Mexico and Florida.

Grants Exemption

AN indefinite blanket exemption from registration for utility holding companies doing an intrastate business was granted March 10th by the Securities and Exchange Commission. Under the order, which is an extension of previous action, companies which may be entitled to an exemption from the Utilities Act under § 3 a-2 are exempted indefinitely by the commission's order and relieved of the necessity of filing applications.

Officials said many companies entitled to the exemption had failed to make application, pending adjudication of the constitutionality of the act. Extension of the order was made "to regularize the situation," an announcement said. It does not apply to subsidiaries of holding companies not eligible for exemption, however.

Florida Ship Canal

BY a vote of 39 to 34, the Senate on March 17th decided against the inclusion of $12,000,000 in the War Department Appropriation Bill for continuation of work on the Florida ship canal. The vote on the Florida canal ended all chance of obtaining money for that work by including it in the Rivers and Harbors projects which the War Department bill would finance. It would either have to be continued by the further expenditure of relief funds, or an authorizing bill will have to be passed through Congress so that the money needed may be included in a deficiency bill. Work on the canal was started last September by an allocation of $5,000,000 to which was later added $400,000 from the $4,800,000,000 work relief fund which Congress voted at the last session

While no Senator challenged the legality of President Roosevelt's action in allocating the work relief funds to this project, there was considerable criticism of the wisdom of beginning a long-range and expensive construction without specific authorization of Congress. That this aspect of the matter appeared most strongly to the Senators was indicated when they voted later the same day, 36 to 27, to put into the bill $8,000,000 to continue work on the Conchas, Sardis, and Bluestone reservoirs, projects which were largely in the same technical position as the Florida canal.

Natural Gas Bill

FEDERAL regulation of the natural gas industry was proposed in a bill reported to have administration backing and introduced in the House last month by Representative Clarence Lea (D.) of California. The proposal was similar to that eliminated from the utilities control bill during the bitter fight last session.

Representative Lea said the bill was drafted after conference with Federal power and trade commission officials. He said its passage this session, however, "depends on whether it receives direct administration support."

The bill's scope is confined to transportation of natural gas in interstate commerce, recognizes state compacts as the probable approach to conservation and proration questions, and names the Federal Power Commission as the Federal regulatory body.

Transportation of natural gas to foreign countries would be subject to commission control. Rates and charges in interstate transportation and sale would be subject to commission regulation. Representative Lea said "undue preferences in rates and services as between localities and classes of services are prohibited," and added that most of the regulatory provisions run along standard lines as established in utility regulation.

Savings to Consumers

NEW contracts between the Ontario Hydro Commission and the Gatineau and Maclaren Power companies of Quebec were released in the Ontario legislature last month by Attorney General Roebuck.

A saving to the Hydro commission of roughly a half million dollars per month became effective immediately, and during the next four years this will amount to nearly $30,000,000. The new basic price is $12.50 per horsepower, with variations for reserves. The old price was $15. Both contracts are for ten years.

The savings, together with savings in Hydro administration amounting to nearly $1,000,000 a year, are to be passed on to the municipalities in the form of "substantial reductions in power charges."

The Ottawa Valley Power Company and Beauharnois Power Company whose former contracts were also canceled by the Power Commission Act of 1935 have been left entirely out of the new agreements. The two companies have started suit in the courts.

Attacks TVA

THE Tennessee Valley Authority should be required to meet the same regulations and taxes imposed on private companies, Wendell L. Willkie, president of Commonwealth and Southern Corporation, charged last month in a radio address.

Mr. Willkie, also a director of the Alabama Power Company, whose stockholders lost the recent TVA suit in the U. S. Supreme Court, denounced the Tennessee river program as a waste of taxpayers' money and an encroachment on private business. The TVA will have no material value to the Tennessee valley, he said. It is "the most useless and unnecessary of all the alphabetical joy-rides."

He attacked the navigation, flood control, and soil reclamation programs of the TVA as "constitutional excuses" for putting the government into the power business.

Denounces Private Firms

PRIVATELY owned power companies seeking to block expenditure of Federal funds for publicly owned power projects were denounced last month by Public Works Administrator Harold L. Ickes in a report to the Senate on the number of power projects financed with government money.

Early last month, the District of Columbia Supreme Court granted a 10-day restraining order halting work on hydroelectric dams on the lower Colorado and Brazos rivers in Texas. The lower Colorado authority, a state body, received a WPA loan and grant of $20,000,000 for the completion of the Hamilton dam, while the Brazos river project contemplates a series of dams under a grant of $30,000,000.

In a memorandum accompanying his report to the Senate, Ickes said:

Almost all the suits have been brought by private power companies who fear the competition which such publicly owned facilities will provide either directly or as a competitive standard. In most cases such litigation attacks the constitutionality of the Federal statutes, and restraining orders have been issued by the Federal courts prohibiting the Public Works Administration from making payments to applicants in thirty-six different cases.

Mr. Ickes' report points out that of the non-Federal elecric power projects 60 are completed, 81 are under construction, and 59 are in litigation. Of the gas projects, 8 are completed, 3 are under construction, and none is in litigation.

The report was made in response to a Senate resolution introduced by Senator George W. Norris, author of the TVA law. A digest of the report, prepared by Ickes' PWA press relations branch, follows:

Non-Federal projects for electric power number 269, and involve a total allotment of $76,091,446.

Gas projects number 29, for an allotment total of $2,088,216.

These figures compare with a Federal power allotment of $151,240,481 and $49,500 for gas projects. They are as of February 15, 1936.

Alabama

Denounces Power Company

DAVID E. Lilienthal, director of TVA's power program in an address last month struck sharply at the Alabama Power Company, charging "obstructionist" tactics and "spectacular profits." It was Mr. Lilienthal's first public pronouncement since the U. S. Supreme Court validated the Tennessee Valley Authority sale of surplus power of February 18th. The power director spoke before civic clubs of Florence, Tuscumbia, and Sheffield—Alabama's tri-cities—which for two years have sought vainly to become power customers of the Tennessee Valley Authority.

His words were said to presage an aggressive TVA policy to apply its power "yardstick" to municipalities within its range.

It was pointed out that in the seven states encompassed by the authority, only 22 counties and 8 municipalities in three states are actually buying power from TVA, which has been in existence over three years. Other proposed municipal utility ventures in the area are under injunction.

Seeks Private Loan

MAYOR Hoyt Greer last month announced the city of Sheffield would make an attempt to get private capital to finance an electric distribution system so that the city may get TVA power.

PWA loans have been approved for the city, but injunctions of stockholders of the Alabama Power Company have prevented them from going through.

Arkansas

First Annual Report

PUBLIC utility costs to Arkansas consumers have been reduced $850,000 a year by regulatory action of the fact-finding tribunal and its successor, the state department of public utilities, the preface to the department's first annual report says. The report, issued March 11th, covers the calendar year 1935. During that time, the report states, efforts of the department resulted in savings of more than $450,000 yearly to electric consumers. Expenditures of the agency amounted to $69,336.48, but it collected $84,222.46 from utility companies in fees and so ended the year with a considerable balance to its credit in the state treasury.

It was said emphasis will be on adjustment of gas and telephone rates in the state of Arkansas in 1936.

Ordinance Reduces Rates

AN ordinance reducing the Arkansas Power and Light Company's gas, water, and electric rates in Batesville was passed by the city council March 10th. It provides for elimination of the present "service charges" and for a schedule of rates 25 per cent lower than formerly.

Power company officials said that any steps to enforce the low rates would be contested in the courts.

California

Refuses Permit

THE application of the city of Santa Monica to operate a bus service into the downtown area of Los Angeles was denied by the local board of public utilities and transportation last month. The board ruled that there was insufficient evidence to sustain complaints against the Pacific Electric Company and the Los Angeles Railway services between the city and the beach community. It also pointed out that the city of Santa Monica pays no taxes for the operation of its bus line and that to grant the application would parallel existing services and split patronage so that operations could not be maintained except at a loss.

Connecticut

Phone Rates Increased

AN increase in rates of the Woodbury Telephone Company, approved by the state commission, became effective April 1st. The new telephone rate schedule calls for 25 cents a month increase for party-line resident service, party-line business service, and in-

dividual line business service, it is reported. Increased taxes and operating expenses are given as the reason for the higher telephone rates.

Illinois

Seeks Elimination of Extra Charge

ELIMINATION of the extra 25 cents' monthly charge on cradle phones was asked in a petition filed with the Illinois Commerce Commission last month by the city of Chicago.

Assistant Corporation Counsel James J. Danaher, filing an intervening petition in the Illinois Bell Telephone rate case now pending before the commission, asserted that the cradle phones cost no more to manufacture or maintain than the standard type, hence the monthly charge made by the company for a 3-year period should be dropped.

Indiana

Gas Pact Arranged

AN interim agreement under the terms of which the Indianapolis city utilities district will operate the Indianapolis Gas Company property until an agreement or a judicial decision determines the validity of the lease to the old Citizens Gas Company was announced last month by the district directors.

The agreement, negotiated to replace the "standstill" agreement between the district and the Indianapolis Gas Company, which expired March 9th, conveyed to gas consumers of the city of Indianapolis assurances that the city gas system would continue to be operated as a unit, and was said to make possible either a negotiated settlement or an unhurried determination in the courts of a question that has been of great importance since the utility district began operating the gas system September 8, 1935. Under its terms the district was to pay the bond interest due April 1st on the Indianapolis Gas 5 per cent bonds, amounting to approximately $175,000, and certain taxes that were assessed against the property prior to this date.

It was pointed out that nothing in the present agreement was regarded as barring negotiations for a settlement out of court in the future, but there was also nothing that indicated negotiations were more likely than adjudication by legal processes.

Kentucky

Municipal Water Plant

DEFINITE steps toward the establishment of a municipal water plant were taken last month by the board of city commissioners in the passage of a resolution authorizing and directing the mayor and city manager of Lexington to enter into a contract for the financing of the purchase of the waterworks plant and system now owned by the Lexington Water Company.

The resolution set out that the city should own and operate its own water plant providing that it can be acquired at a fair and reasonable price and that "after full analysis and investigation, it is determined that it is good business for the city to own and operate its waterworks."

It also was pointed out in the resolution that approximately 85 per cent of all waterworks plants in the United States are municipally owned, and that there is a possibility the owners of the Lexington water system may be agreeable to selling the system to the city at a self-liquidating price.

Seeks New Rates

THE city of Louisville's efforts to obtain new gas and electric rates by negotiation were reported last month to have failed. Following preliminary conferences with officials of the Louisville Gas & Electric Company, during which the city did not reveal detailed figures showing why it believed consumers were entitled to big rate reductions, the mayor said he felt any further discussions would be a waste of time.

The next move was said to be up to Mayor Neville Miller, who was to decide whether a Federal court case, halted two years ago by an agreed judgment on rates, would be reopened, or whether a new suit would be instituted before the state or Federal courts, or before the state commission.

Considers Municipal Plant

MAYOR Huntsman of Scottsville last month announced that he had received applications to fill out for a loan of $150,000 from the Public Works Administration for construction of a power plant. The mayor said he was advised that cities in Tennessee within 30 miles from Scottsville would receive TVA power August 1st.

Maine

Arranges Quoddy Power Sale

DEXTER P. Cooper, originator of the Passamaquoddy Bay project, was reported last month to have said that he had arranged sale of "all the power Quoddy could produce under the present plans. The engineer declined to say who had agreed to take the vast tide-harnessing plant's output, which he estimated at 26,000,000 kilowatt hours annually, but said he could sell even more if the project were constructed on a larger scale.

Michigan

Halts Sales Tax Levy

CIRCUIT Judge Leland W. Carr on March 9th ruled that sales of electric power by municipally owned utility plants are exempt from the state sales tax. His opinion, filed in Ingham circuit court, asserted "it seems to me that the conclusion cannot be avoided that if the legislature had intended to include municipal corporations" within the scope of the sales tax law, it would have used "specific language indicating such intention."

He pointed out that under the ruling of the state board of tax administration, which attempted to invoke the tax against municipally owned utilities, the levy could have been collected regardless of whether the plant operated at a profit or at a loss.

Judge Carr emphasized that "the legislature obviously was satisfied with the interpretation of the act that the board was observing in so far as municipalities were concerned" during the 1935 legislative session. At that time the tax board had viewed municipal utility sales as exempt.

The suit was filed by Lansing, Wyandotte, and Lowell, with the state board of tax administration as defendant. Some fifty communities maintaining publicly owned utilities were said to have been interested in the case.

Street Rental

IF Michigan cities collect from the Consumers Power Company a rental charge for the use of streets, William M. Smith, chairman of the state public utilities commission, last month stated the commission will be forced to increase the company's rates to offset the charge. He said some cities seek to establish a rental agreement, although none so far has been able to collect.

Chairman Smith pointed out that the Consumers Power Company's rates supposedly are equalized among all cities and the collection of a rental charge for the use of the city's streets would create a situation unfair to other cities.

Commission Reduces Electric Charges

AN order reducing electric rates of the Consumers Power Company in approximately 750 Michigan communities was issued March 6th by the state public utilities commission.

William M. Smith, commission chairman, said the order will mean an average reduction of 12½ per cent in the electric bills of residential consumers, with smaller reductions in other classifications.

Chairman Smith estimated total annual savings to consumers under the order at approximately one and one-half million dollars, it is reported.

The average rate per kilowatt hour in the territory affected will be reduced from 3.93 cents to 3.18 cents, effective on all billings April 1st.

Mississippi

Asks Phone Suit Dismissal

THE state attorney general on March 4th announced that he has asked a lower state court to dismiss the state's suit to force the Southern Bell Telephone & Telegraph Company to put into effect an 18 per cent horizontal cut in rates, amounting to $400,000 a year.

as ordered by the commission a year ago.

As soon as the railroad commission made its telephone rate reduction order, the telephone company obtained an injunction in the courts which has never come up for hearing on the merits.

The attorney general frankly conceded that after a careful study of the record, and on the advice and assistance of eminent experts in this line of work, he did not believe he could "successfully defend this suit." At the same time, the attorney general, in a letter to Governor Hugh White, recommended stricter state legislation, including additional funds for regulatory purposes, to be assessed against the utility companies.

Missouri

Must Pay Water Bills

HEREAFTER water consumers in St. Louis must pay their bills in full or have their water shut off, Director of Public Utilities Wall said recently.

Since about 1931, and apparently because of the depression, the city has accepted partial payments at times, he said, but this practice has been discontinued.

Mr. Wall has also disapproved and stopped collection of delinquent water bills by turnkey men sent out to shut off water for nonpayment.

New York

Passes Utility Measures

SIX bills of a series of eleven carrying out recommendations of the joint legislative committee, which in February completed a 2-year investigation of public utilities, were unanimously passed in the Democratic-controlled senate March 17th. The entire series was introduced by Senator John J. Dunnigan, who was chairman of the committee. Prospect of passage in the lower house also was indicated.

One of the bills passed gives the public service commission enlarged powers over the issuance of utility company securities. Another aimed at high cost contracts between the utilities and their affiliates and service subsidiaries, requires that such contracts be filed with the commission for approval or rejection. A third bill requires financial statements from persons giving evidence before the commission in regard to utilities, or a statement of employment connections from those in the employ of utility companies.

Two of the bills which were passed require interchanges of facts regarding utility companies involved in cases before the commission, while the rest of the bills are designed to strengthen the public service law by technical changes.

North Dakota

Rate Cut Proposed

PROPOSED reductions in commercial and residential electric rates in approximately 60 communities, to effect an estimated $75,000 in consumer savings annually, were filed last month by the Montana-Dakota Power Company with the state board of railroad commissioners. It was expected that the electric rates would be approved "within a short time."

Fifty-seven communities would be affected in one proposed rate cut, which would bring the minimum monthly bill in those districts down to $1 from $1.25. A half-cent cut in the commercial rate for the first 100 kilowatt hours per month also was proposed for the same group of communities, with the exception of three.

Ohio

Tackles Water Bills

THE Cleveland city board of control last month approved appointment of five attorneys to assist in collection of water bill delinquencies which now total more than $1,500,000. Utilities Director Frank O. Wallene said the five attorneys would direct a campaign to force payment of water bills by users able to pay.

Municipal Profits Tumble

THE Cleveland municipal light plant made its smallest profit in about thirteen years in 1935, according to financial figures made public last month. The plant's net income was $135,411, a decrease of $67,380 from 1934 and a decrease of about $135,000 from 1933. Loss of profit was blamed in the report on salary increases and the creation of additional jobs under the former mayor and former utilities director. The pay increases totaled $40,000 and additional jobs $50,000, the report said.

Although the plant lost two of its largest industrial customers in December, it showed a 3 per cent increase in the number of large industrial consumers, a large increase of residential consumers, and an increase of 4 per cent in the number of small industrial consumers.

Oklahoma

Rejects Dam Project

OKLAHOMA'S proposed $15,000,000 Grand river dam project met its first severe setback last month when Vinita voters rejected a proposed $100,000 bond issue to purchase an electric power distribution system. The issue lost 460 to 289.

The bonds were proposed to buy the system of the Public Service Company for a possible connection with the hydroelectric plant advocated for Grand river. The Grand river dam, authorized by the last legislature, was expected to serve 17 northeastern Oklahoma counties, but the legislative act prevented operation of a distribution system.

The legislature created a Grand river dam authority of fifteen members and negotiations were said to have been under way for several months for sale of bonds for the $15,000,000 project to the Federal government.

Expects Cab Rate War

ORVAL Mosier, city manager of Oklahoma City, last month revealed that he had received "unimpeachable information" that two new cab companies were planning to place 200 new cabs in operation in the city, nearly doubling the city's taxi fleet. He said the city was prepared to meet the contingency by applying rigid regulations to all taxicabs. Mosier said the addition of 200 new cabs to the city's already cluttered streets "is beyond the realm of all reason."

Pennsylvania

Bars Lessee from Bidding

MAYOR Wilson of Philadelphia last month indicated that future bids for the operation of the city's $100,000,000 gas plant will be confined to concerns which do not operate electric light plants. This would eliminate the United Gas Improvement Company, controlling the present lessee, because of its ownership of the Philadelphia Electric Company. Mayor Wilson was said to have stated that it would be "a ridiculous thing for the city to give its gas plant to a concern that was at the same time a competitor. It is quite evident U.G.I. is more interested in getting customers to use its electricity than its gas." It was reported that formal notice of intention to end the lease would be served by the mayor upon the company. The present lease expires December 31, 1937.

New Utility Court

ALTHOUGH denied by state administration authorities, rumors at the Harrisburg state capitol last month persisted to the effect that a plan was being considered to supplant the state public service commission with a "public service court" of nine lawyers.

According to the report, legislation for the new "court" was expected to be introduced at the next regular session of the legislature. The idea, the story continued, has been under "intensive discussion" for the past several months. This, however, was denied.

Administration spokesmen discounted the rumor, pointing out that while a substitute body for the commission had been mentioned during the last gubernatorial campaign, it had never been taken seriously by the incoming administration.

The proposed legislation would make material changes in the set-up of the commission's work, but in general would follow the public service company act under which the commission now proceeds. One change suggested was that investigators be employed when needed instead of being carried along on a twelve-month basis.

The prospect for such "ripper" legislation was said to be exceedingly poor in view of the Republican control of the state senate.

Names New Commissioner

UPON the death last month of Public Service Commissioner Samuel H. Walker, Governor Earle appointed—the first appointment made by a Democratic governor in the history of the public service commission—Thomas C. Buchanan, who will serve until July 1, 1939, at which time the term ends. However, the appointment must be approved by the senate, which has a Republican majority.

South Carolina

Would Double Tax

IF the bill recently introduced by eighteen representatives in the state house becomes law, South Carolina will increase the state tax on hydroelectric power from one-half cent per kilowatt hour to one cent.

Electricity generated by steam power would be subject to the tax, as well as all power sold within the state if it has not been taxed already. Plants generating not over ten horsepower, or manufacturing power for their own use, would be exempted, along with municipalities making their own power.

Tennessee

Cuts Rural Minimum Rate

THE Tennessee Electric Power Company last month agreed to a conditional reduction in its minimum charge for rural extension lines. The new plan permits rural consumers to contribute cash or labor to the construction of the lines, with a proportionate reduction in the monthly minimum charge per mile.

By such contribution, the standard guaranty of $18 per month per mile, regardless of the number of consumers, may be cut to as low as $12. The minimum monthly bill for each consumer remains at $1.50. The plant was accepted by the utilities commission after a conference with officials of the power company and the Rural Electrification Commission. A member of the commission predicted that the revised plan would "be conducive to the promotion of rural extension."

Texas

Tax Hits Merchandising

THE Community Natural Gas Company, with headquarters in Dallas, was reported last month to have discontinued its district merchandising activities in Texas as the result of the passage of the chain store tax at the first called session of the 44th legislature of the state of Texas.

Merchandise stores at 10 district headquarters, merchandise displays at 6 sub-district offices and at dealer stores were said to have been discontinued and 73 dealer contracts canceled.

West Virginia

Approves Municipal Rate Increase

THE public service commission last month granted two municipal waterworks authority to increase rates to finance PWA loans for extending the systems.

Paden City raised minimum meter rates from $1 to $1.20 for ⅝-inch meters; $2 for ¾-inch meters; $4 for 1-inch, and $20 for 2-inch meters. Other rates remained the same, starting at 40 cents a thousand gallons for the first 5,000 gallons used a month.

Hundred boosted the minimum monthly rate from $1 to $1.50.

The Latest Utility Rulings

Depreciation Allowance Affected by Government Competition

THE steady growth of governmental power projects, the cost of which is partially allocated to navigation and flood control, may directly affect the depreciation allowance required by a privately owned electric utility. Inability of the utility to meet the governmental competition under rates based on Federal bookkeeping methods has been recognized by the Washington Department of Public Service in a rate case.

The department said that it was just and proper to take into consideration some depreciation factors which could not have been foreseen and adequately provided for. The opinion continued:

> We refer specifically to the extensive Federal hydro development at Bonneville on the Columbia river. This large generating plant is rapidly nearing completion and because of its strategic location it is bound to have a material effect upon the operations of respondent and all other electric utilities operating within reasonable transmission distance therefrom. Since a large portion of the cost of this huge hydro development will be allocated to navigation and possibly flood control, the cost of energy generation will be low as compared with similar generating costs of privately operated hydro and steam plants. In a report very recently submitted by the state planning commission or Oregon to the governor of that state an extensive transmission system reaching many points in both Washington and Oregon, including one of the largest districts served by this utility, is outlined. These factors will in the course of time exert a tremendous influence not only upon rates for service but also upon the retirement date of certain items of property now operated by private utilities. This will be especially true of the older hydro and steam generating plants which, because of the higher cost of operation, will not be able to meet the competitive rate of the Bonneville plant. For these reasons we feel that our allowance for annual depreciation expense should be increased to the extent of enabling the utility to set up an additional amount in its retirement reserve to properly care for this contingency.

An allowance was also made for new business expense, since "it is undeniably true that when merchandising activities are carried on, directly or indirectly, by a utility company in such manner as will effectively promote new business and improve the system load factor the results will be beneficial to both the utility and its ratepayers." The department, after referring to a statutory provision that any merchandising carried on by a utility should not constitute a part of its public utility business, said:

> Private dealers seldom do the necessary missionary work but when the demand for appliances has been created and enlarged by the utilities these same dealers reap their full share of a rich and unexpected harvest of profits. We are constrained to believe that the legislature did not intend to divorce merchandising activities from the legitimate utility business, except for good cause, such as stealing the business from other dealers or conducting the same as a separate merchandising business for profit.

Department of Public Service of Washington v. Pacific Power & Light Co. (Cause No. 6736).

Commission Has Exclusive Power to Determine Whether Utility Should Continue to Use Streets

THE supreme court of Illinois held that a city could not maintain an action for a mandatory injunction to compel the removal of poles, wires, and equipment of an electric utility from city streets. The state, it was held, had for

public utility purposes withdrawn the title which the city orginally had in the premises (at the sufferance of the true owner—the state) and placed it in the commission.

A franchise had been granted to the utility company prior to the creation of the public utilities commission, the predecessor of the Illinois Commerce Commission. By the provisions of the Utilities Act, it was held complete supervision of privately owned public utilities had been withdrawn from local municipalities and vested in the commission, with exclusive power of regulation and control of all means and instrumentalities used by the utility in the conduct of its business. Concerning the broad and comprehensive scope of the Utilities Act, Mr. Justice Herrick made the following statement:

> It originated a new system in relation to public utilities and their supervision, regulation and control, regulatory power over the issuance of securities, the type of service to be furnished, what new service might be undertaken in behalf of the public interest, with power in the commission to determine whether existing service might be abandoned or discontinued, to obviate and prevent new competition which would be of no advantage to the public, by requiring a public utility to procure a certificate of convenience and necessity before engaging in or undertaking a new enterprise, and where there was already existing a public utility, as well as competing public utilities, to safeguard both the public and the utilities by the fixing of fair, reasonable, and nondiscriminatory rates.

The municipality had constructed its own utility plant and by means of mandatory injunction sought to remove its competitor. *City of Geneseo v. The Illinois Northern Utilities Co.*

Capitalization of Dividend to Parent Company Disapproved

APPLICATION was made to the New Jersey commission for approval of a note payable on demand which had been issued in 1934, or in the alternative for approval of a mortgage on utility property in favor of a parent company to secure the payment of a bond which was intended to discharge the note.

The commission denied approval of the note with the statement that "approval cannot under the statute be granted after issuance." Moreover, it was said, the facts wholly failed to justify the issuance of the note bearing interest at the rate of 6 per cent.

Approval of the proposed bond and mortgage was also denied. The commission said that if the annual net earnings of the company in the past and present had been as claimed, no need or justification would seem to exist for imposing upon the company the burden of paying interest at the rate of 6 per cent per annum over a period of thirty years. In no year since 1911 had dividends fallen under 12 per cent, and for the last seventeen years dividends had in no year fallen below 20 per cent.

Moreover, it was said that the record showed retirements from fixed capital totaling only $455 during the same period that $27,632 was credited to the depreciation reserve. These facts unexplained, it was said, put into question the claimed present value of the property of the company. The commission also criticized the financial management of the operating company under the control of the parent. *Re Washington Water Co.*

Distributing Company Held to Be Affiliate Rather Than Agent of Producer

THE Iroquois Gas Corporation and the United Natural Gas Company of Pennsylvania were held by the New York commission to be affiliated within the meaning of the New York Public Service Law. The relation between the

two companies was said to be actually that of buyer and seller and not that of principal and agent as assumed in a contract investigated by the commission.

The contract provided for the furnishing of gas by the United Company to the Iroquois Company for distribution and sale. Provision was made that the distributing company would furnish monthly statements showing the total amount of gas distributed and sold "by the Iroquois Company for the account of the United Company," and at the same time would "account and pay over" to the United Company from the proceeds of the sale so distributed and sold a sum computed according to a specified scale of rates. The Iroquois Company under the contract is entitled to retain the difference between the amounts so paid over to the United Company and the amount received by the Iroquois Company as the proceeds from the sale of such gas "as commission for the services of the Iroquois Company in distributing and selling such gas."

It was shown that the distributing company rather than the producing company held franchises in New York and that it and not the producing company had filed tariffs in New York; that its customers using gas received from the United Company could not be distinguished from those using locally produced gas. The commission said it was clearly shown that the relationship purported to be set up in the contract was not in accordance with the facts. *Re Iroquois Gas Corp. (Case No. 8557).*

Motor Carrier Rates Fixed in Washington

THE Washington Department of Public Service, by a recently enacted law, has power to fix reasonable rates and regulations of common carriers and to fix reasonable regulations and minimum rates of contract and special carriers. In accordance with such authority rates, rules, and regulations were established.

In the absence of sufficient accurate data the department was not in a position to give as much consideration to cost of operation as it considered desirable, and while it was clear that costs of operation were increasing rather than diminishing, the department was convinced that an order changing the general level of existing rates because of cost would not be justified. The department assumed that the present rate structure was not excessive, since no testimony was offered by any of the shipper witnesses or others to that effect. There was a noticeable lack of interest of shippers.

The department discussed at length the characteristics of common carriers giving scheduled service, common carriers giving unscheduled service, contract carriers, and carriers using special equipment designed for the movement of particular commodities. Such questions as load factor and cost of maintaining terminals were considered, as well as idle truck time of contract carriers waiting for full loads. It was said that if specialized service of contract carriers is to be rendered on terms unfavorable to the essential and general service of common carriers, rates for the latter will have to be increased to a level which will result in discrimination between shippers and truly burden the general public if not entirely deprive it of the most essential transportation service. The department said:

> In order to stabilize the transportation industry and insure continued complete service to the public it is essential that the motor freight rate structure be uniform to the end that competing shippers pay identical rates for identical service. . . .
>
> Based upon the record in these proceedings and our varied experience in discharging the regulatory duties imposed upon the department by the motor freight transportation laws of 1921 and 1933 and after considering all relevant matters properly before us we find that the minimum rates for con-

tract carriers and the just, fair, reasonable, and sufficient rates for common carriers should be the same when the service rendered the shipper is substantially the same.

Re Rates for Common Carriers et al. (Order M. V. No. 22787, Hearing No. 1434).

Rates Properly Based on Average Business Conditions

A TEXAS public utility company, in resisting the enforcement of rates fixed by the state commission, objected that a 4-year test period from 1929 to 1932 had been used as a basis for calculating fair return. The Texas Court of Civil Appeals sustained the commission in using such a period, Justice Blair stating:

> The rule is settled that rates are not based upon the results of business of any one year alone, but upon what is estimated as being the average business over a period of years; the future being gauged as nearly as possible by the past experience. The reason for the rule is the fact that any business may fluctuate from year to year because of changing conditions or circumstances which may affect it. Ordinarily, a test of five years or more next preceding the inquiry, if available, is selected.

The court found that there had not been a proper test of the rates complained of. The former ordinance rate was 75 cents per thousand cubic feet, while the rate fixed by the commission was 55 cents. Opponents of the utility contended that under the lowered rates business would have been better and the gross revenues received under the 75-cent rate did not demonstrate the results which might have been obtained. The court seemed to agree with this viewpoint. Justice Blair said:

> An actual test of the lower rate might have resulted in a larger return, by bringing about an increase in appellant's business, and manifestly this court would not be warranted in holding that the lower rate was either confiscatory or unjust and unreasonable, as a matter of law, in advance of an actual test of the rate; but that under the aforementioned rules as applied to the facts, appellant failed, as a matter of law, to show the rate either confiscatory or unjust or unreasonable.

The court also sustained the power of the commission to make the lowered rate retroactive to the date when the proceedings were started and to order a refund of the excess revenues collected from customers during litigation. *United Gas Public Service Co. v. State et al. 89 S. W. (2d) 1094.*

Tax and Interest Items Not Incurred Are Excluded from Capital Account

THE Indiana commission authorized the inclusion in capital account of expenditures made for additions, extensions, and improvements but excluded certain items with the statement:

> The items of taxes should not be allowed for the reason that the additions, extensions, and improvements were begun subsequent to March 1, 1935, and completed and put into operation prior to March 1, 1936, and, therefore, no taxes were assessed, levied, paid or charged on this property. The items of interest should not be allowed as no bonds, notes, or other evidence of indebtedness were sold, nor any interest-bearing debt incurred for the acquisition or construction of the said additions, extensions, and improvements, the company having paid the cost of these additions, extensions, and improvements with cash on hand in its working capital and, therefore, no interest was paid. The accounts of the utility were not so kept that the items of miscellaneous construction expenditures can be easily checked by the commission, the amounts of these items on the report of the company having been determined by the company charging against these additions, extensions, and improvements an arbitrary proportion of its general and miscellaneous expense, therefore, these items should not be allowed.

Re Southern Indiana Gas & Electric Co. (No. 12103).

Interest Payment to Affiliate Disallowed

THE Pennsylvania commission prohibited the Northern Pennsylvania Power Company from paying 8 per cent interest on indebtedness to the Metropolitan Edison Corporation, an affiliated corporation. Payments already made on the indebtedness were required to be treated as a reduction of the principal of indebtedness. The debt had been incurred without securing commission approval.

The amount of the indebtedness was borrowed in June, 1935, when the Northern Pennsylvania Company was required to make a sinking-fund payment of bonds or cash to the trustee under its mortgage. The utility purchased $14,000 of bonds from the Metropolitan Edison Corporation at 104 per cent, or $14,560, and set up an account payable to the holding company for the purchase price.

Payment of the interest at 8 per cent had been made monthly, with the result that the effective rate was more than 8.2 per cent. The commission found that some of the bonds were purchased unnecessarily and ordered the indebtedness to the holding company to be reduced by the amount of the 4 per cent premium upon them, as well as by all interest paid thus far upon the entire open account. *Re Northern Pennsylvania Power Co.*

Inadequate Revenues Justify Abandonment of Gas Department

WHEN revenues from the gas department of a gas and electric company have been insufficient over many years to meet operating expenses and there is no hope of improvement through a rate increase, the company, in the opinion of the Oregon commissioner, should be permitted to take steps to transfer gas users to the electric department, with the ultimate aim of completely abandoning the gas department.

Although when a public utility dedicates its property to public service, it cannot lightly abandon the obligations to serve the public so long as there is a public demand, said the commissioner, and temporary losses will not justify abandonment of the service, nevertheless a lack of patronage is substantial evidence that the public no longer desires the service.

It was shown in this case that the average customer with electric residential lighting and a gas range under present rates would have an electric bill of $3.32 per month and a gas bill of $2.07, or a total bill of $5.39. Studies indicated that conversion of such a customer to an electric range on the basis of present rates would make the monthly bill $5.88, or an increase of approximately 50 cents a month.

The electric service of the company, it was said, was subsidizing the gas division, and it was reasonable to assume that if the gas division were eliminated and the necessity for such subsidy removed, particularly in view of the increased electric load, electric rates could eventually be adjusted. *Re Eastern Oregon Light & Power Co. (U–F–720, P.U.C. Oregon Order No. 3248).*

Commission Order Not to Be Used to Satisfy Personal Grievances

AUTHORITY was asked by a town in Minnesota to construct a telephone line in order to obtain toll service after disconnection of township lines by a telephone company for failure to pay in cash. The telephone company was